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Natural Resources Committee
September 28, 2007

[LR77 LR89 LR113]

SENATOR LOUDEN: Okay, we'll start our hearing today on LR113. And we'll start off with the introductions of the committee members and staff. To my left, far left, is committee clerk, Barb Koehlmoos. Next is Senator Deb Fischer, from Valentine; next is Senator Carol Hudkins, from Malcolm; and to my far...to my right, next here is Jody Gittins, legal counsel for the committee; next is Senator Gail Kopplin, from Gretna; next to him is Senator Tom Carlson, from Holdrege. Others senators may join us later on today. We also have pages today. Our pages are Kara Johnson and Marcus Papenhausen. I got that one right, I guess. With that, those wishing to...first of all, we need to silence all cell phones or pagers or anything, so as not to interrupt the clerk with their recording process. Those wishing to testify on a resolution should come to the front of the room when that resolution is to be heard. As someone finishes testifying, the next person should move immediately into the chair at the table. The green sign-in sheets for testifiers are on the table by the doors and need to be completed by all people wishing to testify, including senators and staff introducing resolutions. If you are testifying on more than one resolution, you need to submit a form for each resolution. Please complete the form prior to coming up to testify. When you come up to testify, give it to the committee clerk. Do not turn the form in before you actually testify. Please print. And it is important to complete the form in its entirety. If our transcribers' have questions about your testimony, they use this information to contact you. If you do not wish to testify but would like your name entered into the official record as being present at the hearing, there are white sheets for you to sign by the door. The list will be part of the official record of the hearing. As you begin your testimony, state your name and spell it for the record, even if it is an easy name. Please keep your testimony concise and try not to repeat what someone else has covered. If there are large numbers of people to testify, it may be necessary to place time limits on testimony. I would also like to remind you that the purpose of the hearing is to gather information for the benefit of the committee; it is not appropriate to respond to what someone else has testified to, unless a committee member asks for clarifications. If you have handout material, give it to the

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page and she will circulate it to the committee. If you do not chose to testify, you may submit comments in writing and have them read into the official record. And no vocal display in support or opposition to a resolution will be tolerated. With that, we'll have Senator Schimek begin with her resolution, LR113. Welcome, Senator Schimek.

SENATOR SCHIMEK: Good morning, Chairman Loudon, and members of the Natural Resources Committee. For the record, my name is DiAnna Schimek. I represent the 27th Legislative District, here in Lincoln. And I do thank you for scheduling this hearing. As you remember, LB534 was introduced last session, and the bill is still being held in committee. That bill would have allowed communities to develop a local utility that would give communities the ability to find other ways of dealing with storm water requirements of the federal Clean Water Act. The legislative resolution before you today reexamines this issue. Today, you will hear testimony from representatives of different communities across the state who will be providing the committee with updated information on how their respective communities are dealing with the federal directive, and the status of their plans across the state. As I said in my testimony before you earlier on LB534, this issue is not going to go away. Simply put, it's the urban water issue for our state, and we must act in a timely manner. We heard last year how 38 states nationwide allow their communities to adopt storm water utilities in one way or the other, including Iowa, Kansas, Colorado, and Wyoming. In addition, we have over 400 communities nationwide that have adopted storm water utilities. That clearly indicates this is not a new issue. I would like to stress that the model within the proposed legislation is permissive. Ultimately, communities must make the decision. With a storm water fee option, we at least give cities an additional tool with which they can work, as opposed to the limited option of raising their constituent's property taxes. Several relevant questions were raised by the opponents of the bill last year. And I'd just like to say that I'd be more than happy to work with this committee to try to address some of those current concerns as best we can. And in fact, I anticipate that some of the testifiers who will speak after me will attempt to address those concerns in a more specific fashion. I believe that all of us realize that this is a problem, a definite problem

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that we need to solve. And we need to find some ways in which that can be done. With that, Mr. Chairman, that concludes my testimony. And I believe, you have the list of people who are going to testify that at least we know about. [LR113]

SENATOR LOUDEN: Okay, thank you. [LR113]

SENATOR SCHIMEK: Um-hum. [LR113]

SENATOR LOUDEN: Questions for Senator Schimek? Senator Carlson. [LR113]

SENATOR CARLSON: Senator Louden. Senator Schimek, I'm going to ask a question, and then if you feel like this is something that someone coming behind in testimony would address, that would be fine. [LR113]

SENATOR SCHIMEK: Great. [LR113]

SENATOR CARLSON: I'd like a little clarification on the difference between a property tax increase and a fee structure for dealing with storm water, because in both of them the money, in a sense, eventually comes out of the same pockets. But there is probably a difference in philosophy. And I don't know if you'd want to address that, or if that would be somebody else. [LR113]

SENATOR SCHIMEK: I can address it simply, and then somebody behind me may wish to elaborate on it. But I think that the property tax solution really puts the load on the homeowners, and a significant load on the homeowners. I think the fee-based really puts the load on the people, or the institutions, or the businesses that have helped to create the problem. And I think that's the difference, simply put. [LR113]

SENATOR CARLSON: Okay, thank you. [LR113]

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SENATOR LOUDEN: Other questions? Thank you, Senator Schimek. Would you like to close? [LR113]

SENATOR SCHIMEK: I'll waive. You know, during the hearing on the bill, I had to leave. I did not get to hear a lot of the testimony. I've subsequently read the transcript. But I'm going to stick around at least and listen to the testimony this morning. And so I may wish to or may not. [LR113]

SENATOR LOUDEN: Okay, that's fine. Thank you. [LR113]

SENATOR SCHIMEK: Thank you. [LR113]

SENATOR LOUDEN: I'll also mention at this time that Senator Wallman has joined the committee, is a member of the Natural Resource Committee. Now, at the present time, I have a list of...oh, Mark showed up. (Laughter) How about that! Well, he's so young and slim, you know, he's hardly noticeable. Thank you. Senator Mark Christensen has also joined the committee. (Laugh) At this time, I have a list of people from Lincoln, Scottsbluff, Grand Island, Ralston, and Omaha that would like to testify, and they may testify in that order, first, if that was what we think we need. So our next testifier will be a representative from the city of Lincoln. [LR113]

NICOLE FLECK-TOOZE: (Exhibits 1 and 2) Good morning, Senator Louden, and members of the committee. My name is Nicole Fleck-Tooze, N-i-c-o-l-e, last name is F-l-e-c-k, hyphen T-o-o-z-e. I'm with the Lincoln Public Works and Utilities Department, representing the city of Lincoln. And I have provided a letter from Mayor Chris Beutler expressing Lincoln's support for both LR113 and LB534, the urban storm water fee enabling legislation under consideration by the committee. We've heard a lot of discussion recently about the funding needs to address water issues in rural Nebraska. And as you know, and as Senator Schimek just mentioned, we're here to speak to you about the urban water issues, which are no less significant. The map that I have

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attached to my testimony shows the 19 cities and 4 counties across Nebraska which now have requirements for storm water management programs. And as you can see, it's a pretty significant distribution across the state. We've estimated, as I've mentioned before, the near-term statewide cost for storm water quality programs at about \$24 million, annually. And Lincoln's costs represent over \$6 million of that total. But when we look at the real statewide needs, which include all the related flooding and storm water issues that our urban areas are facing, the near-term costs approach \$32 million. The storm water enabling legislation proposed in LB534 is central to addressing these critical urban water issues. And without a storm water fee system, communities must rely on property taxes to fund increasing storm water costs. On the back of the map handout, on the flip side, the graphics illustrate the estimated distribution for funding Lincoln's storm water program through property tax versus a fee where the costs are based on the impact of each property to the storm water system. The Legislature has continued ongoing appropriations in the amount of \$2.5 million, statewide, through the Storm Water Management Plan Program. And while this is a good starting point, there is clearly much more to do to ensure that communities have sufficient funding to deal with storm water costs. If enabling legislation is passed to allow storm water fees, the Storm Water Management Program has the potential to be a source of funding to offset fees for the public sector, with a key area being state properties and local public schools. At the hearing for LB534 in February, I provided an overview of storm water utilities. And to provide a framework for today's discussion, I'd like to just briefly review the major items. A storm water utility is a fee-based utility, much like a water or sewer utility. The fee is based on the amount of storm water contributions of the site. Often, impervious surface area is used as a measure of contribution. And all funding goes to an enterprise fund dedicated to storm water program. As a visual reference, I've attached a couple of examples that illustrate one approach to measuring properties' storm water contribution. And we did talk about these in February. But again, because it's sort of a complex topic, I just wanted to briefly review them. It shows the difference in using property taxes versus fees to fund a storm water program. The first example is a single family home. And if you take a look at it's sight, generally, what you're looking at

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is the building area, a And you can see that outlined in red, and the paved area, which you can see outlined in blue. And if you take a typical home in Lincoln area, we estimate that the property tax contribution for storm water is \$55 a year versus, when you look at the actual contribution based on the contribution of storm water from the sight, a fee might be in the neighborhood of \$30 per year. The next example is a commercial building. And this is a building that is downtown, one of the downtown banks in Lincoln. The property tax contribution for storm water being \$2,700 a year versus a storm water fee of \$320 a year. So you can see that the impact is not just borne by commercial properties for storm water fee, in this example, because there is not a lot of area...impervious area spread out. The storm water fee is actually quite small for this commercial property. And the third example is another commercial property, a grocery store, which does have a greater impervious surface area and a greater storm water impact--property tax at \$1,600 a year versus the storm water fee at about \$3,100 a year. The other examples that I provided attached to the testimony are a couple of images demonstrating the kinds of programs that a storm water fee would fund. I know you had a tour yesterday and looked at a number of these different types of projects. But these would include capital projects relating to water quality, flood management, storm drain projects, and then of course the many federally mandated water quality programs that are all a part of that. As Mayor Beutler mentions in his letter, this summer EPA visited Lincoln to perform an audit of our storm water program. And while we've not yet received the audit results, it has emphasized the seriousness and the urgency of this issue. And just as an example, last year the city of Dallas reached a \$3.5 million settlement with the EPA to resolve an EPA order that was based on the finding that the city failed to implement, adequately fund, and adequately staff the city's storm water management program. So we do really feel that it's an urgent issue. I'd like to thank the committee for the opportunity to comment this afternoon on LR113, and thank Senator Schimek for taking the initiative to introduce LB534. And we'd urge you to advance this legislation which would assist Nebraska's communities in addressing this very important clean water issue. I'll be able to answer any questions. [LR113]

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SENATOR LOUDEN: Questions for Nicole? Senator Kopplin. [LR113]

SENATOR KOPPLIN: Yes, on your example of commercial property on a fee basis, are you doing that strictly on square footage? [LR113]

NICOLE FLECK-TOOZE: This example is based upon the square footage of the impervious area only. So it would be the footprint of the building and then the footprint of the parking area. [LR113]

SENATOR KOPPLIN: Okay. Supposing a piece of property like this then would go through their own ways of reducing storm water runoff. How can that be fit in? [LR113]

NICOLE FLECK-TOOZE: The way that that would fit in would be through a credit system. And the legislation does address providing for credits through the Storm Water Fee Program. And essentially, what you would look at is how...what they've done on the site, what kind of practices, if they've done from pervious parking, for example, or they've put in swale caps for storm water, that could all be credited back. And you would look at how that reduced their impact of storm water on the overall system, and provide that back to them in the form of a credit [LR113]

SENATOR KOPPLIN: Okay, thank you. [LR113]

SENATOR LOUDEN: Senator Mark Christensen [LR113]

SENATOR CHRISTENSEN: Do you have an outline if you went to your storm water fee? Okay, I think about how a grocery store, in your example, or a car dealership that covers wide areas is going to be impacted. They're going to either have to go to pervious type parking lots or put a car dealership in a vertical parking lot that are broad, or their tax structure is going to be high. Everybody pays for that, you know. My questions comes...I'm not sure we gain anything switching off property tax. And I hate

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property tax. And I'm the guy that stuck a lot on his own people, but in different direction. But ultimately, whether groceries go up, because they pay for this, cars go up, we ultimately pay for it. So I don't know that we gain anything other than the new taxing structure. But my question comes in, have you figured out your structure, how you'll give credit back for if they put in the pervious-style parking lot, the green roofs, which we learned about yesterday, or the grassway ditches to absorb it? Do you have a structure of how that works? Because we all know the streets aren't going to get changed. We all are going to have to cover for that. Have you figured out how this will end up netting people? [LR113]

NICOLE FLECK-TOOZE: Well, there are actually a lot of very good examples nationwide. As Senator Schimek mentioned, we've got over 400 communities, nationwide, that have adopted storm water utility fees. And the majority of those, I believe, have a credit system in place. And so we would probably look to some of the most effective communities in terms of modeling what works well for credits. You need to have something defensible. Obviously, citizens, I think, are going to demand that what they've done on their site is truly reflected in a credit system back. The real details of that program, of course, there's an investment up front to set that program up and establish those credits. That's probably one of the largest portions of setting up a program is setting up a system of credits. And the details of that, of course, we wouldn't be able to go into until we know we can begin a program. I think one of the real benefits to establishing a storm water fee, I think there are multiple benefits. But as you look at the structure of it, you have a more equitable distribution of the impacts to the system versus who is paying for those impacts. And when you look historically at what happened with water and with waste water, those were both systems that were originally funded by communities out of the General Fund. And now today we have the technology to measure people's impact on the storm water system. And I think what you're seeing nationwide is that it's going a similar way. One of the other benefits is that communities can much better plan a program over time because you know you have a consistent source of funding, it's dedicated to storm water, and you can establish that

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based upon those impacts. And it also encourages people to take steps to develop credits and reduce those impacts on the storm water on their site. [LR113]

SENATOR CHRISTENSEN: Quickly, could you give me examples of some other town, so I could look over how they do that? [LR113]

NICOLE FLECK-TOOZE: Yeah. Des Moines, Iowa, for example, has a storm water fee, that might be a very good example. I believe that Kansas City and several of the communities within Kansas have a storm water fee system. Lenexa, Kansas is a good example. And we'd be happy to provide the committee a list of some of the Midwestern communities that have those, if you'd like to look at those as examples. [LR113]

SENATOR CHRISTENSEN: I would, thank you. [LR113]

SENATOR LOUDEN: Senator Carlson. [LR113]

SENATOR CARLSON: Thank you, Senator Louden. I've got two questions. One, on the diagram here, the circle that shows the public, yellow refers to public. Help me understand what's included in the public category. [LR113]

NICOLE FLECK-TOOZE: Yes. And for Lincoln, this would probably be the highest percentage of any of the other communities within the state in terms of the 20 percent. But this would include all state and local public properties. So state owned properties, university, Lincoln public schools, all...again, all state and local public properties. [LR113]

SENATOR CARLSON: Okay, thank you. A second just observation. On the example, the downtown commercial, that diagram, we have no paved area. So it doesn't make any difference what particular business that is. But that business has employees and has customers. The thing that it doesn't have is a paved area for those people to park.

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And we look at the other example, which...whether it's a grocery store, or car dealership, or whatever, somebody has to pay for the place for the vehicles to be. In the one case, they just don't own that area. And so to me it's kind of a struggle who gets saddled with the responsibility for that business. Because both businesses have customers and employees that park someplace. [LR113]

NICOLE FLECK-TOOZE: Yes. I see just what you're saying. And I think there are several different ways to handle it. Sometimes you see a lesser impact because businesses have their parking underground or it's part of a vertical parking structure. But there are also a lot of different treatments that we can do with parking today to reduce the runoff. And so you actually see a credit, potentially, to a storm water fee, if you have some pervious paving, or use some other techniques within your parking area to reduce that runoff. You can also take that runoff and instead of directing it straight to the storm drain system, have an area outside your parking area outside your parking area where it's treated. So I think there's actually a lot of flexibility in how you look at reducing those fees. [LR113]

SENATOR CARLSON: One other comment. Des Moines, for example, was a city that you mentioned. One thing would be having a fee system and a credit system. And if Des Moines has it, important to me would, how long have they had it, and it's one thing to have a system, it's another thing how satisfied are the residents of that city with the program? And so I don't know why kind of information is available in that regard, but that would be important to all of us because it's one thing to have a structure, it's another thing how satisfied are the residents with it? [LR113]

NICOLE FLECK-TOOZE: I think that's a really good point. And one thing to remember with this legislation is that it is permissive. And what it's doing is enabling local communities to adopt that locally. And really the heat is going to be on local officials to make sure it's a system that's fair, and equitable, and that people are satisfied that they're getting the service that they're paying for through that fee. So I think again, we're

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not asking the Legislature to take that heat, we're asking just for the ability at the local level to, if that's a choice that we want to make as a community how to fund this program, that we have that available as a tool. [LR113]

SENATOR CARLSON: Thank you. [LR113]

NICOLE FLECK-TOOZE: Thank you. [LR113]

SENATOR LOUDEN: Senator Christensen. [LR113]

SENATOR CHRISTENSEN: I don't know that you can respond to this, but it's part of my thought process. And I look at example, let's say a car dealership spends the extra money or grocery store to make the impervious parking lot to get around this, or they pay the extra fee. And then you have the problem of a neighboring state or town doesn't, people are going to run over there and shop if it's cheaper. You know, how are we going to affect...you know, I realize that only certain towns have these problems. But how do we...probably no way to address it. But you know, there's almost a very difficult situation of handling this. [LR113]

NICOLE FLECK-TOOZE: Well, it's certainly challenging. But I guess I'd say in Nebraska we're really looking at all of our urban areas that have to meet this kind of a standard. So I think there is some uniformity in that regard. And also, if the example that you gave, if they're not addressing it and sending that storm water downstream, someone has to pick up the costs somewhere. It will be borne by that community in one way or the other. And I think we're looking again at the most fair and equitable and up front way to do that so that we can address these water quality issues. [LR113]

SENATOR CHRISTENSEN: Thank you. [LR113]

SENATOR LOUDEN: Senator Fischer. [LR113]

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SENATOR FISCHER: Thank you, Chairman Loudon. Thank you, Nicole, for being here. On your pie chart you discuss the public, the yellow part of that. And I realize Lincoln has more than most areas of the state when it comes to public facilities; you mentioned the university for one. Was I correct in hearing you included Lincoln public schools in that figure, that percentage? [LR113]

NICOLE FLECK-TOOZE: Yes, they'd be part of that 20 percent. [LR113]

SENATOR FISCHER: When I look at the pictures on the material that you gave us, and you have the paved areas outlined in blue, what about city streets? [LR113]

NICOLE FLECK-TOOZE: City streets often are looked at as part of the conveyance system because they are integral in terms of the storm drain system and the piping that conveys water. And so in many communities that's looked at as part of that conveyance system. [LR113]

SENATOR FISCHER: So city streets would be exempt from this? Or is there city property listed in that pie chart? [LR113]

NICOLE FLECK-TOOZE: City property, under the legislation as you have it, would also be part of this 20 percent. But certainly, I think, we're looking at ways, more and more, and even beginning to work with Lincoln public schools to see how we can reduce that runoff on our public properties as well. I think the reason that the legislation was introduced in this way is that there was a lot of concern. Lincoln public schools, the university, and concern with people paying property taxes to support those, and also them being responsible for that fee. So that doesn't mean that there aren't things that we can do at the local and state level to try to offset storm water. [LR113]

SENATOR FISCHER: I would assume that your goal in setting this up would be so, as

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Senator Schimek said, especially residential property taxpayers are not going to be hit as hard under this. But if you include, and I realize you don't have a firm plan on this, but if you include public property in part of your plan, part of the setup where they do have to pay a fee, doesn't that go right back on the property taxpayer? If you have, you know, especially the public facilities that are included in this. I mean I can, I guess, accept the argument too that if you have businesses that are going to have to be paying fees, they'll just pass that along to their consumers. So what's...you know, really, what's the purpose of this? So it looks good to property taxpayers, looks good to consumers that they aren't going to be directly hit? That they're not going to see it on their bill? But every time they go to the grocery store, they're going to have a few more cents added on? I'm just thinking, who's going to pay this in the end? [LR113]

NICOLE FLECK-TOOZE: Right. [LR113]

SENATOR FISCHER: It's not going to be, in my opinion, it's not going to be the car dealer that has the paved parking lot. He's going to get hit with it, but is he going to pay it in the end? [LR113]

NICOLE FLECK-TOOZE: Well, maybe just one clarification. Are you, just so we're on the same page, we're talking about state and local properties being exempt, right? So, for example, Lincoln public schools would not be paying a fee under this scenario. [LR113]

SENATOR FISCHER: Who is paying the fee under the yellow pie chart? [LR113]

NICOLE FLECK-TOOZE: Well, under this example, the storm water fees would be borne by everyone, except for state and local properties, because those would be exempt. And I think what we're talking about is, you know, just as you would charge a car dealer for their impact to the waste water system and those fees, just as they would be charged for their use of water, so would they be charged for the impact to the storm

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water system. And ultimately, it has to be paid one way or another. And how is that cost distributed? I'm not sure if I answered your question? [LR113]

SENATOR FISCHER: Maybe I'm not sure I'm getting this at all. (Laughter) Okay, start over. Who's in the yellow,... [LR113]

NICOLE FLECK-TOOZE: Okay, let me just perhaps... [LR113]

SENATOR FISCHER: ...where it says public, public 20 percent? [LR113]

NICOLE FLECK-TOOZE: ...begin by a comparison. Yes. The intent of this chart is to compare what would be the difference between, in Lincoln, as we've estimated the difference by paying for storm water costs by property tax. And that's the first pie chart, where we look at about 70 percent of the costs being borne by residential properties, about 30 percent being borne by nonresidential, which would include commercial, it would include public, etcetera. Storm water cost by utilities fees is the second pie. And what we've tried to do is make it clear, because the legislation exempts local and state public properties, we wanted to make it clear that in Lincoln that's about 20 percent of the total pie, just in terms of who's contributing to storm water runoff. And we've obviously taken a conscious step to exempt those properties from the legislation. The remainder then would be 44 percent nonresidential, your commercial, industrial-type properties, and 36 percent residential. And so the idea is, obviously, there's a different distribution here than if you're bearing this cost with property tax, where the homeowner is going to bear a much larger share, even though their property isn't actually contributing to the storm water problem by that percentage. The storm water problem, 36 percent of the storm water problem comes from residential properties. [LR113]

SENATOR FISCHER: Right. Twenty percent comes from public properties. [LR113]

NICOLE FLECK-TOOZE: Right. [LR113]

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SENATOR FISCHER: But you have that as a percentage of storm water cost by utility fee. So if the public property, such as LPS and university are exempt, whose in that 20 percent that's going to be paying the fee? [LR113]

NICOLE FLECK-TOOZE: Correct. If the public properties are exempt, then that has to be made up somewhere else. You're absolutely right. [LR113]

SENATOR FISCHER: So this chart really applies to the bill as it was first presented where they were not exempt? [LR113]

NICOLE FLECK-TOOZE: You could certainly look at it that way. I think the effort was to try to show what the contribution was to storm water. And you're right. [LR113]

SENATOR FISCHER: Okay, but you have it the percentage of cost by utility fee. So if you would now want the university and LPS exempt, I'm just asking, how big is that yellow slice going to be on this pie chart? Obviously, it's not going to be 20 percent. No matter how many public entities there are in Lincoln, that's not going to be 20 percent, it's going to be less. And what's the percentage going to be then? Will residential pick up more, or will commercial pick up more on the utility fee? [LR113]

NICOLE FLECK-TOOZE: Well, I think as a community, we'd have to determine whether that was going to be made whole out of the General Fund, or whether the fees would cover that portion, in which case I would see you distributing that cost equitably amongst the rate payers. [LR113]

SENATOR FISCHER: Okay, thank you. [LR113]

NICOLE FLECK-TOOZE: You're welcome. [LR113]

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SENATOR LOUDEN: Senator Carlson. [LR113]

SENATOR CARLSON: Thank you, Senator Louden. In listening to the discussion here and Senator Fischer question, it looks to me like that this chart, take that 20 percent and you divide that up, then the red and the blue are going to pay that 20 percent. It's going to end up about 44 percent paid by the homeowners, and 56 percent paid by businesses. That's the comparison between the other one that's just red and blue and this one. But there's something missing, I think, unless I'm not catching it at all. If we have public buildings exempt and they continue to develop areas and properties, which they have to do, what's newly developed ought to be built in such a way that it contributes to taking care of the storm water, not just exempt so somebody else can pay for it. The total goal is to reduce the effect of storm water on our environment. [LR113]

NICOLE FLECK-TOOZE: Absolutely. I think, you know, really there's an obligation in the public sector to try to begin to set an example for how we can do things right when we begin with our new structures. And I do think you're beginning to see that happen more and more as there is greater recognition for that and there are greater tools out there to do so. [LR113]

SENATOR CARLSON: So it would seem to me like the public sector ought to be the best in terms of dealing with this problem, and building and improving property in such a way that it handles it in the best way. Now, if I'm on the school board and we're building a new building, and in order to be the best in that area it's going to cost \$100,000 more, I don't know how interested I am in doing that because, as a school board member, I'm spending the public's money. And there's conflicting polls here. [LR113]

NICOLE FLECK-TOOZE: Certainly there are some competing goals. I do think that we are seeing more and more number of solutions that aren't necessarily at a much higher cost. As long as you plan and build them in from the beginning. I'd also like to remind you that this is by far the highest percentage that you're going to see of any of the 19

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community...cities that you have in the 4 counties in the terms of public cost. This is quite a high distribution just because of the university and all the state facilities here. I think in Omaha we're more at about 10 percent, 10 or 12 percent, and perhaps even lower for many of the other communities. So don't let this skew in terms of thinking statewide. For most of the other communities this is a much smaller piece of the pie. [LR113]

SENATOR CARLSON: Thank you. [LR113]

SENATOR LOUDEN: Senator Hudkins. [LR113]

SENATOR HUDKINS: Nicole, thank you for being here. My problem, I think, is the credit system, which I think is a wonderful idea. But how do we do that? I mean, are we going to have to set up a whole other layer of government? Who pays for that? Is it going to be, in the four counties that are affected, is it going to be the county that pays for all of that administration? [LR113]

NICOLE FLECK-TOOZE: That's a really good question. Typically, the work and the investment on developing the credit system is an up front effort. And once it's in place, it's set and for the most part, unless there's a major change, you don't have to deal with it very much. And so there is an up front investment when a community, whether it's a city or a county, sets up a system to develop a fair way of recognizing credits. And it's based on the same science and logic that the utility fee is based upon, looking at a rational nexus between what you're doing on the site and the impact to the storm water system. And you're right, that is time intensive. But it's worth it to set it up, because it says to your constituents, we're really looking at the real impact to these properties. And again, I think there are enough models out there nationwide that we have the ability to do that in a way that makes a lot of sense. And Lincoln, as we would project costs, it's probably something that we would...it would just be an up front cost that we'd take into consideration setting up the storm water utility. [LR113]

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SENATOR HUDKINS: But that up front cost is going to have to be paid by someone, which says to me that the property taxpayers are going to pay for that administration. [LR113]

NICOLE FLECK-TOOZE: Well, you may or, logically, it could also be reflected back on the storm water utility. Once it's set up, it might be paid back by the storm water utility, once you get that system in place. [LR113]

SENATOR HUDKINS: Thank you. [LR113]

NICOLE FLECK-TOOZE: You're welcome. [LR113]

SENATOR LOUDEN: Well, I'll ask a question, now that we've plowed this up for 40 minutes. (Laughter) What I'm wondering, the way you're setting this up, you're going to charge for every gallon of water that runs off a parking lot or roof or whatever that is. Is that correct? [LR113]

NICOLE FLECK-TOOZE: Well, the legislation talks about charges that are based on the storm water contribution. And many communities do that by looking at the impervious surface area that you have. [LR113]

SENATOR LOUDEN: Now, my understanding is that you guys don't have to worry about contribution. It isn't quantity, it's quality that you have to be concerned about. Is that correct? [LR113]

NICOLE FLECK-TOOZE: Well, those two things are intricately tied together. And if you take a look at storm water runoff, in general, the courts have really upheld looking at impervious surface area as a nexus between what the storm water impacts are. And... [LR113]

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SENATOR LOUDEN: Now, you're...just a minute now. You're telling me then if you fill a bucket of drinking water out here in the street, it's going to get the same fee as if it was a bucket of water you washed off of a motor? [LR113]

NICOLE FLECK-TOOZE: Well, I think that's a really good question. And one of the things that we're talking about here for communities certainly a lot of the urgency and the need for us to proceed forward has to do with clean water issues and the federal mandate. But there are other issues related to flood management that are...you really cannot separate from the clean water issue. And we're talking about taking a comprehensive approach for storm water, just as you would for any of your other utilities, where you address those systems together. I can't imagine how you would separate out water quality from water quantity types of issues, if you were going to do so in a community. I just don't see how it could be done. [LR113]

SENATOR LOUDEN: Now, my next question would be, how often do you sweep your streets? Because that would have an effect on the quality of your storm water. I mean, if your streets are clean, your storm water is going to be clean. It can down Antelope Creek for all...whatever...Salt Creek, wherever it goes, and doesn't bother anything. And the EPA isn't concerned about it. It's the junk that floats with it. So do you have a... [LR113]

NICOLE FLECK-TOOZE: Well, you make a really good point. Street sweeping is certainly part of a communities...they talk about best management practices, or practices that we need to do to try to reduce impacts to water quality. But those don't pick up all of the pollutants to the system; that's just picking up the gravel that you spread, the sand that's spread during a lot of the winter months, really the larger particulates. It's not picking up a lot of the other pollutants that might enter into the system. So that is one part of the program and that is a cost to the program. But that certainly does not address water quality comprehensively. [LR113]

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SENATOR LOUDEN: Now, in order to do that, though, you still have to have some type of a settling basin or something, that's the only way you're going to clean that water up. You're not going to run it through a filter or a sieve or something, you're going to have to have some type of filtering system or a settling system so if these car dealers or Wal-Mart is a big example now, they don't build anything unless they have their settling basin out there. Where do those people that do that get their credits? And where can people, residential people, with their low-impact development that's retrofitted and what not, get their credits back on this fee, like you propose? If it's going to be...you're going to just pay for...in other words, you're charging people when it rains on their property is what you're doing. And I'm questioning if you're going down the right road by not having a street cleaning program, and the same way with your parking lot can be cleaned and that sort of thing. [LR113]

NICOLE FLECK-TOOZE: Sure. And we do have a street sweeping program. And I think that's a really integral part of any community's water quality program. But I think your question is really a good one. There are a lot of different ways for, whether it's a commercial property or residential property, for storm water to be offset on the site. In Lincoln, for example, we're starting a new rain garden program where we're trying to help cost-share with homeowners that want to put a rain garden in that helps reduce the runoff from their site and helps to pick up some of those pollutants and treat them in that rain garden. That's the kind of thing that a homeowner could get credit for on their storm water fee. Similarly, just as you mentioned Wal-Mart, they may do something like a settling basin, or they may have their overflow parking paved with pervious pavement so nothing runs off and it infiltrates into the ground. [LR113]

SENATOR LOUDEN: Now, would they pay a fee then if nothing runs off? [LR113]

NICOLE FLECK-TOOZE: Well, if they could prove that they're getting to zero runoff, which I think is kind of a long-shot, I think what you would actually look at is, what is the

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percentage that they're going above and beyond just the basic requirements for storm water? [LR113]

SENATOR LOUDEN: Yeah, but it wouldn't be zero runoff, it would be the quality of the water that runs off. If it goes off like drinking water, then would they still have to pay the fee? [LR113]

NICOLE FLECK-TOOZE: Typically, communities nationwide that have developed fees, again there is a number of different ways you can look at it, but there is a nexus between the water you have running off and both water quality and quantity issues. And so they would basically have to demonstrate what the reduction was in the water running off. And you could also, if you wanted to as a community, set up looking at certain pollutants. The more that you get really complex in your system and trying to look at every different variable, the more complicated it gets for anyone to understand. And you've got to make sure it's a defensible system. So, I guess, what we're asking for is the flexibility for communities to adopt a system that makes sense to the citizens in that community. And that may be based on impervious surface area, it may be based on another set of principles that are based on sound engineering. I think when you look again nationwide, the courts have really upheld if you've got a nexus between what you're looking at for your storm water impacts and what you're charging for a fee, you've just got to have that rational nexus there. [LR113]

SENATOR LOUDEN: Okay. Well, thank you. I guess, since you're the first one, why we've baptized you by fire. (Laughter) Thank you for testifying. [LR113]

NICOLE FLECK-TOOZE: Thank you very much, appreciate it. [LR113]

SENATOR LOUDEN: Our next testifier would be the representative from the city of Scottsbluff. Welcome, since you made the long trip. [LR113]

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LYNN GARTON: (Exhibits 3-5) Good morning, Senator Louden, and members of the committee. And thank you, it was a long trip. We came out last night. My name is Lynn Garton, L-y-n-n G-a-r-t-o-n, and I'm the water reclamation supervisor with the city of Scottsbluff, Nebraska. I'd like to thank you this morning for allowing me the opportunity to testify on this important matter. I'm supplying you with two documents today. The first being a letter in support from the Mayor of Scottsbluff for LB534, and the second is a Comprehensive Report pertaining to storm water funding. This report was developed from several months of research from the last legislative session. And I, personally, authored the report and would like to just take a couple of minutes to kind of give you a perspective of what is in that report. The first page of the document is an executive summary, followed by an in-depth index of the entire report for your convenience. And hopefully, you'll have a moment to look at it some time in the near future. The section entitled "Storm Water Management Problems in Nebraska" is really what I consider the meat of the document itself. It describes how we have ended up where we are today. Storm water is really a forgotten realm, when you really think about it. We know it's there. We know it can and will cause problems some day. But most municipalities take the stand that we will deal with it when the problem occurs. Why this mentality, some of you may ask? Budgetary constraints and a lack of funding resources for flood control are only considered after a significant event brings the problem into the public eye; and then a lot of times we only have the funding to be able to put a band-aid on it. Now with the issuance of the Storm Water Discharge Permits, we not only have to deal with quantity, but we also have quality to deal with, as you well know. It's been 37 years since the adoption of the Clean Water Act of 1970. We began an immense task by treating the water that we drink and the waste that we discard. To this day, we still strive to become even more successful in removing newly identified contaminants in our drinking water and waste streams. For years, we've relied on water and waste water infrastructure to protect the wellbeing of our communities and our environment. Hydrocarbons, oils, grease, fertilizer, pesticides, sediments, pet and animal waste are all just but a few forms of non-point source pollution, more simply put, storm water runoff. These are pollutants that we continue to allow to enter our most precious natural

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resource. How can we achieve the necessary protection of the waters of our state without some kind of funding resource? This can probably be explained within the section entitled "What is a storm water utility?" This section focuses on the concept of the utility, rate methodology, credits, and collection of utility fees. The following section highlights the benefits of the storm water utility. And the final three sections contain in-depth information as to storm water utility operations, financial considerations, and planning. As you can see, we have a lot of work ahead of us. And we know our first line of defense lies with knowledge. Public education and participation is our first and foremost weapon in the fight to accomplish our goal. Good housekeeping practices within our communities, such as additional street sweeping, limited fertilizing within our parks, and providing more environmental friendly ways of conducting everyday municipal maintenance issues are also essential in providing successful storm water management programs. We will do our very best to accomplish these tasks with a minimal burden to the citizens of our state. However, I can't stand before you today and tell you this doesn't come without a cost, as you very well know. At some point along the way, our endeavor will need to be...we'll need to find the necessary financial means to meet the intent of this unfunded mandate. Currently, under state statute the only means that we are afforded is to apply surcharges to utility bills or increase water and sewer rates. None of these options are fair and equitable to the individual citizens of our communities. Your support in the passage of LB534, in the upcoming legislative session, would provide the enabling legislative tool necessary to the growing number of communities regulated under the storm water permitting process. This bill would enable communities within the state to acquire the financial means essential to conducting the effective storm water program based upon each properties storm water contribution. This solution will alleviate the need to implement a flat rate system to meet the requirements of the EPA and NDEQ. The simple truth of the matter is this: storm water permitting is here to stay, it began in our state with the two metropolitan cities having populations of 100,000 or more. In seven short years, it has now come to affect ten more communities with populations as low as 10,000. We know the trend will continue until most, if not all, communities of the state will be faced with the same dilemma at

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some point and time in the future. We have been working toward passage of bills similar to LB534 for several years. And we have worked diligently to refine the content and feel that we have found it to be fair and equitable to all citizens within our great state. Delaying this bill the opportunity to be moved from committee to the floor in your next session will only prolong the inevitable and create undue hardship on the citizens of our communities. With that, I'd say thank you, and I'd entertain any questions. [LR113]

SENATOR LOUDEN: Questions for Lynn? Senator Christensen. [LR113]

SENATOR CHRISTENSEN: Thank you, Chairman Louden. Lynn, thank you. I sat here and I think about when we have runoff and we know it's contaminated, we treat it. We've got it taken care of. I'm looking at building a house. I got to sit and think, you know, maybe I should put in a pervious driveway. But if I do, then I'm going to have weeds grow between the bricks, I'm going to use more chemicals, I'm going to concentrate that to keep it clean. If I've got a leak in oil from an automobile it's going to drop there, it's going to concentrate down. Then eventually that goes down and contaminates the water. If it happens on cement and run off in the storm water and got treated, I would have had it taken care of. Are we looking at the long-term best solution? You know, I guess I'm almost scared of a pervious parking lot or pervious driveway, because now I'm going to use chemicals, because I ain't going to let weeds grow underneath my car. That wouldn't look good. And I think about...I watch my neighbors fertilize their lawns. I've been a farmer all my life, and they use 100 times more fertilizer and water than I ever do. My neighbors water their lawn twice a day, equal amount I do three times a week. My lawn looks as good. But I know they're washing all that stuff down to the water table. Well, lawn we can't change; driveway we maybe can. But I'm starting to look long-term here going, I'm not sure I want a pervious driveway, because I'm going to have...just delay my problem for the future. You know, this is complicated. This is as bad as 701, a complicated issue. [LR113]

LYNN GARTON: I agree, Senator Christensen, it really is. There's a lot of complicated

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issues that go along with it. I think one misconception that you may have here is that storm water that is running out in the street is not treated. It never gets treated. It runs directly to our waterways. And that's really where that quality issue came from. And pervious driveways, things of that sort, sidewalks or parking lots can be...the weed growth issue can be eliminated, depending on what kind they are. If it's poured concrete, there is a poured concrete impervious...or impervious poured concrete, which looks exactly like concrete, and nothing can really grow through it. It allows the water to seep through. You know, there are other ways to take care of those smaller issues. And like I mentioned in my testimony, one of the biggest things that we really have to do initially, and we know this right now, is public education. We really have to get out there and talk to the people within our community, and all over, about how you're not supposed to do all those extensive fertilizer applications, letting people know about, you know, don't be pouring paint down the storm drain because it's not treated. Those things happen all the time, you know, within our communities. We see it occur in Scottsbluff all the time. In fact, we went through a few of those episodes here recently where we've tracked a small spill, out of a driveway, from about two miles away, from the river, all the way to the river. And that small spill just happened to be a chemical that a farmer uses to apply...a dye, actually, not a chemical, when they're spraying their crops. And just a gallon of that stuff spilled in his driveway, and we happened to see it...you know, get a call, and it took us almost a day to investigate where that came from. Fortunately, there was no remedial action that had to be taken. But, you know, we took our fire department, HAZMAT team and police department, and everybody to track them down. It's a long process. And it's not going to be easy, we know that. But we need the means. Right now we don't have any means, other than charging people additional money on their water bill or waste water bill, and that's what we do in Scottsbluff. We take money from each one of those funds to help support our storm water. And we really don't do an adequate job. You know, we put our maintenance off because other things are more important. And so if we keep taking money away, from things that are really important, to do this, then we're letting other things go by the side. [LR113]

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SENATOR CHRISTENSEN: I understand. You know, I'm even thinking about, you know, I seen pictures yesterday and different things, taking nonpervious surfaces and you're putting brakes in the parking lot so they drain to a grassy area and make a little wetland, things this way. I love it. But it hit me, the more I thought about that, now we're concentrating all the contaminates that was on that parking lot in that little area. It's just a matter of years before it goes down to the groundwater that way. Are we not better off sending it through waste water, because we know, because of the Clean Air Act...Clean Air Act, Clean Water Act we're going to have to clean that storm water, we're not better off that direction? [LR113]

LYNN GARTON: I think if we got into the fact of having to treat storm water, we would create a larger nightmare than we have right now. You know, there's no community out there right now that can actually say they could take their storm water and run it through a waste water treatment facility. The cost to do something of that sort would be way more immense than what we're talking about here in the storm water fee base. And again, if we were to do that, then we probably would end up being back to the same thing where we'd be raising those waste water rates so immensely that people wouldn't...you know, it would cause more hardship on the community. So we're trying to get this thing into a more feasible way for everybody to benefit, and not have each residential customer pay the cost for the contribution of somebody else. [LR113]

SENATOR CHRISTENSEN: Thank you. [LR113]

SENATOR LOUDEN: Senator Fischer [LR113]

SENATOR FISCHER: Thank you, Chairman Louden. Thank you, Mr. Garton. [LR113]

LYNN GARTON: Thank you. [LR113]

SENATOR FISCHER: Especially thank you for this report that you've provided for us. I

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hope to be able to spend quite a little time and go through it. But as I'm just doing some quick scanning, you mentioned page 11, what is a storm water utility? A few things caught my eye on that. I'll try to have a short question, so you can have a short answer. Under focus mission oriented, it speaks of an initial charter, and then says an expanded charter. So this would...a storm water district, utility would be a constantly changing layer of government then? You would come in with...you could come in with an initial plan and that would change over time, as you would address different needs. Would that be correct? [LR113]

LYNN GARTON: That would be correct to say. And I think that would really be based upon additional regulations being put upon us from EPA and NDEQ, much like water and waste water. [LR113]

SENATOR FISCHER: Okay, Enterprise orientation, utilities are designed to offset basically the General Fund. [LR113]

LYNN GARTON: Correct. [LR113]

SENATOR FISCHER: Sustainable revenues--revenues generated by storm water utilities gradually increase. [LR113]

LYNN GARTON: Again, that would be based upon further regulations being placed upon us. I mean, today, you know, in the waste water system we charge a flat rate based upon your use. And so that would be the same way. [LR113]

SENATOR FISCHER: Okay. Page 13, on the benefits of a storm water utility, you have four bullets there at the top basically identifying that this would be a new funding source for cities to supplement the funding that is available now for cities. Would that be a correct statement? [LR113]

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LYNN GARTON: A little misconception there you might have is that this funding would be solely for storm water. It wouldn't be for buying police cars, or fire trucks, or... [LR113]

SENATOR FISCHER: Correct, but it would... [LR113]

LYNN GARTON: ...putting new streets in. [LR113]

SENATOR FISCHER: ...it would still be an additional funding source granted to cities. [LR113]

LYNN GARTON: Correct. [LR113]

SENATOR FISCHER: Okay. The second bullet, supplemental funding source. In here the revenues that are generated by this utility replace General Fund that is used for this now. Correct? Am I understanding that correct? [LR113]

LYNN GARTON: Some communities. This report was done... [LR113]

SENATOR FISCHER: Right. [LR113]

LYNN GARTON: ...over a wide variety of communities. [LR113]

SENATOR FISCHER: And as I said, I'm just picking things out here. And I do appreciate you giving it to us. And I... [LR113]

LYNN GARTON: Sure. [LR113]

SENATOR FISCHER: ...I want to see if I'm interpreting this right on a fast read through, in the last five minutes. Okay? Sustainable revenues, and in here again it says that they

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can be generally increased through rate hikes and increasing or imposing special user fees. And here again, if this authority is granted to cities and/or counties, I think we need to realize that even though the discussions that are taking place now on how this utility could be set up, what fees that...I guess, what the fees could be, you know in your report this kind of drives it home. Yeah, they can be gradually increased. Right? [LR113]

LYNN GARTON: Yes, that's a reality, yes. [LR113]

SENATOR FISCHER: Okay. Also you speak of bonds. A bonded revenue stream, you can have bonds for capital improvements. Am I understanding this correctly that then a storm water utility would have the authority to bond? [LR113]

LYNN GARTON: Not necessarily what you are looking at passing right now. This report is based upon other storm water utilities and the way the legislation was set up for them. What I didn't report was just try to give you a complete overlook of what other states are doing right now. [LR113]

SENATOR FISCHER: In the current bill before this committee, that this study is based on, bonding is not included in that bill. [LR113]

LYNN GARTON: Not that I know of, no. [LR113]

SENATOR FISCHER: Okay. Thank you very much. [LR113]

SENATOR LOUDEN: Senator Kopplin. [LR113]

SENATOR KOPPLIN: Yes. I need a chance to show my ignorance here so you can help me a lot. (Laughter) First of all, I did notice in your report you are considering quantity as well as quality. [LR113]

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LYNN GARTON: Yes. I think we have to. We've forgotten about quantity for several years. And like I mentioned in my testimony, we really don't think about storm water, especially in western Nebraska right now, because it's been so dry. And so the problem occurs. And we've seen that happen on several occasions. You know, we need to think about both. We're mandated now, under the Storm Water Permitting Process, to worry about quantity issues or quality issues, I should say. But quantity is still an issue we need to take into consideration. [LR113]

SENATOR KOPPLIN: Okay. I want to go back to pervious concrete, which I know nothing about. But if Senator Christensen puts in his driveway, or let's say a car lot puts in a whole lot of concrete, it's going to drain through the concrete. How often is he going to have to replace his concrete in a climate like ours? [LR113]

LYNN GARTON: There has been a lot of research being done, especially here recently with the new regulations coming out. I believe Omaha has done some research with their Homebuilder's Association on pervious concrete, laying samples of that to see about heaving with freezing and those kinds of things. I'm sure that's what you're concerned with. And so, you know, I couldn't tell you right now off the top of my head. But I know there's research going on right in our state, with our climate, about that. [LR113]

SENATOR KOPPLIN: Okay. Well, along that same question then, I think if we have a nice, slow, gentle rain it's going to seep through. But if we have a downpour, it's not going to seep through, it's still going to go to the street, right? [LR113]

LYNN GARTON: Some probably will. There will be some contribution. But after...I've personally seen some of this pervious concrete. I was really amazed that they can turn four or five garden hoses onto it and you never see a drop on the stuff. So you know, technology is getting better every year with storm water itself. In fact, you know, new technology is coming out every day. So there are ways for us to take care of those

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things. And there are ways for businesses, new developments to take advantage of those technologies that are out there and receive those credits that we talk about to reduce their utility bill. [LR113]

SENATOR KOPPLIN: Well, let's just assume that it can't take care of everything, you're still going to have runoff. Then we come back to a question that came up earlier. Does it really matter at that point? Because the sediments and the oil and stuff have gone through the concrete. And what's coming off now is not a quality issue. Would that be correct? [LR113]

LYNN GARTON: I guess, you know, without standing there and really looking at what that water quality is, you know, I couldn't tell you yes or no on that issue. More than likely, it's going to be, you know, most of the sediment is going to be taken out of it. But we still have a quantity issue to think about, yes. [LR113]

SENATOR KOPPLIN: Okay. Thank you. [LR113]

SENATOR LOUDEN: Senator Wallman. [LR113]

SENATOR WALLMAN: Thank you, Chairman Louden. Thank you for coming. We had big rains down south in the Blue River Basin, and they took the first flush that was coming off of there. Most of it was animal feces. So I guess, the cities ought to have pooper scoopers. But anyway, so you can't hardly get rid of that because, you know, that's on lawns, it's in golf courses, it's on the streets. So we have...I hate mandates, you know, when it comes out of here...or our nation's capital. But any ideas these local communities have, I think, this Legislature really appreciated because it's not going to go away. And our ancestors built big cisterns to save the water to drink, you know. All the buildings on the farms, you know, my place, too, used to have a cistern, saved all the water, you drank it. So we didn't have that storm water runoff off the place. But I have a so called driveway that's rock, Senator Christensen. And it has water runoff after

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awhile. So thank you. [LR113]

LYNN GARTON: I will say that you that you can are correct with the pet waste and things of that sort. But again I'll go back to the simple fact that, you know, as mentioned in my testimony, our first and foremost offense within this whole program is public education and public participation. And that's where we're really focusing our efforts right now is to try to educate the public on how to take care of the problem right there at home, which will eliminate a lot of things for us in the future. [LR113]

SENATOR LOUDEN: Okay. Other questions? I have one, Lynn. I guess then you would like to see the Legislature develop legislation that would allow these towns to form a utility district for storm water? [LR113]

LYNN GARTON: Correct. [LR113]

SENATOR LOUDEN: And give them the authority to, what, levy a tax, or levy a usage fee? [LR113]

LYNN GARTON: A usage fee would be the most equitable way of user fee. [LR113]

SENATOR LOUDEN: Okay. And then if any bonding issues come up, then it would be up to the city to take care of any...supplying extra funding that would be necessary, if you had to build some type of a settling basin or something like that, because of runoff on your public streets? And that would be up to the city to fund that? All your utility district could do was...would charge a fee on the usage. And what kind of fee would that be? Would that be...should that be set in law how much could be charged, or you know like our NRDs can only go 4.5 cents on \$100 or something like that. Should that utility district be set up like an NRD, you can only go at a certain levy, or how would you recommend that be? [LR113]

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LYNN GARTON: I would really probably have to say that, you know, if the legislation was passed, we would probably take...I would take the same stance that Nicole did earlier. We would have to do a lot of research and look at how fee bases are set up throughout the nation and really try to find the most equitable and fair way to do that for everybody that's out there. I wish I could sit here and tell you it's a penny a gallon today, but I can't say that. You know, we would literally have to go out and do that research and pin that all down and bring that back to you in the future. [LR113]

SENATOR LOUDEN: Well, that's for sure. If the Legislature decided to let you form some type of a district like that, there certainly was going to have to be some guidelines on how high you're going to go or that sort of thing, or else there will be, what would you say, hell to pay someplace along the line. (Laughter) And that's what we don't like to see. Any other questions for Lynn? Thank you for testifying, Lynn. [LR113]

LYNN GARTON: Thank you. [LR113]

SENATOR LOUDEN: And thank you for making the trip here. Our next testifier would be a representative from the city of Grand Island, is that correct? [LR113]

STEVE RIEHLE: (Exhibit 6) Yes. Good morning, Senator Louden, and members of the committee. My name is Steve Riehle, R-i-e-h-l-e. I am the city engineer and public works director for the city of Grand Island. I appreciate the opportunity this morning to speak to you on storm water runoff. Storm water quantity and quality are very important to Nebraska communities, not just on the east coast of Nebraska, but throughout the state. Grand Island is the administrator for the Nebraska Storm Water Cooperative. We're a group of ten non-metropolitan communities across the state that are required to have a storm water management plan. It all started with the Clean Water Act of 1970, as Lynn mentioned earlier. We were designated by the DEQ and the EPA as phase II storm water communities. So under that we have to have a storm water permit. We joined together to find ways to meet the requirements of that unfunded, yet mandated

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storm water permit. What we appreciate, as phase II communities, is that we weren't in phase I. It was great, as phase II communities, to be able to look at and watch the Omaha and Lincoln areas, and other states across the nation, deal with the issue. And so we can learn from what they do. It's nice to not have to be first. Somebody else can go through the issues of hammering out credits, impervious surface, and things like that. And then we can learn from their mistakes and not have to make those same mistakes. The communities that are part of our storm water cooperative include anybody that's over 10,000 in population from the 2000 census, that's Beatrice, Columbus, Fremont, Grand Island, Hastings, Kearney, Lexington, Norfolk, North Platte, and Scottsbluff. We're very pleased to have Lynn and Blaine, from Scottsbluff as members of our community; they're very forward-thinking and work very hard helping the rest of us understand what we're supposed to do, and what we're up against. Our communities are in year two of a five-year storm water permit. Year two will end at the end of December of this year. Joining forces together we're able to share ideas and resources, and hopefully lower the cost of dealing with this unfunded mandate. As I said, we're glad we're not first. And we're glad we're united together to work through those measures. The seven things we're supposed to do, the first two are education outreach and public involvement or participation. And those are the ones that Lynn mentioned. It's simple things, like making sure that everybody knows that impervious surface concrete can work, so that other people know that you're not supposed to clean out your paint brushes in the gutter; clean out your paint brushes in your yard. It's amazing how well Mother Nature works in cleaning up storm water. We've even encouraged people to wash their cars in their yard. Not very many of them want to do that because it's hard to get your car out of your yard then without making a mess. (Laughter) If I think of your yard and washing out your paint brush, for instance though, communities across the nation that up against the mandate and having to treat their storm water and even some communities use it for waste water, one of the ways to treat that is to use a wetlands. It's amazing what Mother Nature will do if you can design a system appropriately and then monitor it. It's amazing what a nice wetlands will do as far as cleaning up the quality of storm water. Some of the other seven things we have to work on is elicit

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detection and elimination. Back in the day when you used to, at the farm you'd run your grey water from your kitchen sink and your washing machine out into the ditch, that's not allowed anymore. Some people still have those connections to the storm water. We think we've eliminated all of them in Grand Island, but we're going to have to put in a system to track those down so that we can make sure that nobody is connecting. We want to make sure construction sites have proper erosion control measures in to make sure they don't fill our storm sewer systems with silt. We want to make sure, after the project is done, that they manage the system, and make sure they take care of their impervious parking lot. Projects that have been in place for impervious parking lots, for instance, they've done a number of them in the Colorado area, and I think the one I saw the pictures of about three weeks ago had been in place for two years. And they showed some pictures on a sunny day in January of two parking lots. They were done with asphalt, actually, pervious asphalt to where the water could soak through. It was pretty neat to see the piles of snow that they pushed off to one corner of this parking lot, in the normal asphalt parking lot the snow would...the pile would melt and create a sheet of ice across the parking lot. And in the pervious paved parking lot, they put regular asphalt underneath where the cars parked, and then pervious pavement in the driving lanes between the parking stalls. And then the pile of snow would melt and it would drain over to the pervious pavement and disappear and drain down into the subgrade. And so then the parking lot wasn't icy. The one I looked at, the pictures had been in place two years. So there is testing being done nationwide on those systems. The last two things we have to do, and one of them is we have to clean house ourselves, the municipal operations. That involves things that you've already heard today, like street sweeping and making sure that whatever operations we're doing are not adding to the problem. We've already started in Grand Island, as have many of the other ten communities, cleaning house first. We are going to ask contractors and businesses to make sure that they reduce the...improve the quality of storm water runoff from their properties, and we have to do the same thing, whether it's our parking lots or our streets. The last thing we're doing, that we're required to do is monitoring. So we're supposed to measure the quality of the storm water so that we can try to figure out if the

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other six measures we take are actually reducing the contaminates in our storm water. It's important that we improve our storm water, because if we don't the next phase of storm water regulations that could come down from the EPA could require us to treat our storm water. That's a scary venture for the city of Grand Island the capital costs to build a facility to collect all of our storm water into one location so that we can treat it is four years worth of every dollar we have for property taxes, and then the annual operating cost is roughly equal to our current property tax asking. That's a lot of dollars. And so we're hoping that we don't have to go that direction. Our ten communities in the cooperative are working with Omaha and Lincoln to learn from what they do. We've tied up with Keep Nebraska Beautiful affiliates, the UNL Extension, the Department of Roads, the Nebraska Local Technology Assistance Program, everybody we can to learn from and have a program that works. The magnitude investment in our storm water system is sizeable for our communities. Our options to fund this unfunded mandate are very limited. We're required to comply with the unfunded mandate, or face noncompliance fines from the EPA; I think you heard earlier about a fine that Dallas had of \$3.5 million. Property taxes in communities across the state are, in my estimation, not the fair way to fund the storm water program. I used to work at the Department of Roads before I went into the private sector, and then back to city government, and I remember discussions with people about gas tax dollars. Nobody likes taxes, and nobody likes raising taxes or anything like that. But I think the fair thing about gas tax dollars is if you drive a lot, then you pay a little more and you're using the roads more, and you should. If you are older, on a fixed income, and you don't drive your car very often, you're not going to be paying a lot of gas taxes and you don't use the roads. I think the same thing applies to people that might buy a new car. If you're on a fixed income or you don't have a lot of money and you don't buy a new car very often, then you're not going to pay a lot for that parking lot for that business that runs a commercial car lot. The other thing good about it that makes it more fair is there will be an incentive on people to take measures to reduce their impact on the storm sewer system. Just like there is right now with an electric or natural gas utility, if you're building a home or a business, you make sure it's insulated because you want to lower your utility bill. If you build a business, I think you'll

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want to make sure your storm water is taken care of so you can lower your storm water fee. I think having the tool there will cause the private sector to rise to the case and do something about that. I do encourage the committee to advance the legislation that will give us communities additional options to fund this unfunded mandate. I thank you for your time and will take any questions that you have. [LR113]

SENATOR LOUDEN: Questions for Steve? Senator Christensen. [LR113]

SENATOR CHRISTENSEN: Thank you, Chairman Louden. Steve, does Grand Island have any of these nonpervious concrete (inaudible)? [LR113]

STEVE RIEHLE: No, we haven't put any in yet. The only installations I'm aware of, outside of Lincoln and Omaha area, are Norfolk, Nebraska, they've done three of them this summer. [LR113]

SENATOR CHRISTENSEN: Why not? Are you not doing any improvements in town or why aren't we looking at this? [LR113]

STEVE RIEHLE: We've got a project scheduled for October in a subdivision where we're doing a joint project with the developer in Grand Island. We had a private contractor that went to a workshop sponsored by the local Ready Mix outfit on impervious concrete. And we had two contractors come in with wanting to do it on certain driveways. And there are three Ready Mix companies in town. The Ready Mix company where this particular contractor buys concrete from was not up to speed with that technology yet. There is a Ready Mix company in Grand Island that also has plants in Omaha and Norfolk, and that's the company we're working with to do the project in October. So I think slowly it will make its way out there and we'll start doing installations like that so everybody can see them. When we do our project in October, we've talked about inviting people from Hastings and Kearney, so that other people can come and see it. It's normal concrete, but yet it's not. When you look at the surface it looks like

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popcorn, there's a lot of holes in it, and there has to be for it to function like Lynn says, where the water runs through it so quick. It's just amazing, when you see a sample, how they pour the water on it and it goes through it. And it's not just the concrete or the asphalt, it's the surface underneath, because you have to put a layer of gravel underneath of that so that the water has a place to go to. It's not just the concrete that's pervious, it has a base underneath it, so you build two or three foot of gravel underneath that to help carry the water away. [LR113]

SENATOR CHRISTENSEN: I seen pictures of that yesterday. But do know the added cost of doing that? [LR113]

STEVE RIEHLE: I was quoted the cubic yard cost for the concrete, and I can't remember it. It seems to me like it was around a 50 percent increase in the cost of the concrete itself. The placement cost wouldn't vary, but the cost of the material was 50 percent higher. [LR113]

SENATOR LOUDEN: Other questions? Senator Carlson. [LR113]

SENATOR CARLSON: Senator Louden. Having experience in the past with the Department of Roads, and this is going to sound like maybe I'm digging at something, and I'm really not, I'm thinking of some comments I heard yesterday in a hearing. But what would...you said, I believe, you can learn something from the Department of Roads, or using them as an example. Expound on that, how is...are they doing anything, or what do you learn from the Department of Roads. [LR113]

STEVE RIEHLE: A lot of what we do...if I speak for the ten communities that are part of our cooperative and the ones that we work with a lot in Grand Island, whether it be Hastings, Kearney, Lexington, Columbus, and Norfolk we work with the most, and even North Platte, when a new issue comes up and we're trying to work through standard plans that a contractor might use for erosion control measures on their site, we'll let big

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brother, the Department of Roads, take the lead, work out the details of that, and then we will take what they have and try to retrofit it for our community. They also developed a standard specification book for construction of streets, streets, bridges, culverts, and things like that. And we'll use that for our cities, and then make additions or modifications to make sure it fits our communities, and then also follows what we're required to do or allowed to do under state law. The newest one we're working with the Department of Road on is we have to train contractors across the state and engineers across the state on how to design and build a construction project to keep the silt from plugging our storm sewers and affecting the quality of our water. So there is some education involved in that. And the Department of Roads recently took the lead on that effort, and they're going to develop a training program, and then we're going to use that training program for our contractors and engineers to train them on how to develop a system to keep the storm sewers clean from a construction project. [LR113]

SENATOR CARLSON: Thank you. [LR113]

SENATOR LOUDEN: Senator Wallman. [LR113]

SENATOR WALLMAN: Thank you, Senator Louden. Grand Island, I think, has a high water table and so does my community, at Cortland. And I don't know if that concrete system would work. You know, we're always pumping out water from the basements. So would that work in like Grand Island? [LR113]

STEVE RIEHLE: On a small scale, we don't have any concerns about that, on a large scale we would have concerns. If we were to use a wetlands for a treatment system for our storm water, in Grand Island we have to watch very closely where we position that, because we would not want our wetlands to have a negative impact on any close properties and cause groundwater to infiltrate into their basements. So we'd have to be careful. On a small scale, we've talked about it and we're not nervous about it. On a large scale, if we built a system and collected it all into one location, we have to be very

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careful where we place that. [LR113]

SENATOR WALLMAN: Thank you. [LR113]

SENATOR LOUDEN: Senator Fischer. [LR113]

SENATOR FISCHER: Thank you, Chairman Louden. Thank you for being here. With the previous testifier, Senator Louden brought up the point that NRDs have a limit on what they can levy. If you set up the storm water utility district would you be in favor of having that legislation put a limit on? The previous testifier said that, you know, if it was passed, then we, then you would need to look at and figure out the structure. I think it would be our job to figure out the structure before we would ever pass it. So would you be in favor of seeing some kind of limit put on what type of fee you could charge or have the Legislature determine that structure? [LR113]

STEVE RIEHLE: I wouldn't...I would think...if I can avoid whether I support it or not, I would think it would not be uncommon to have some sort of a limit, you know, whether there's a lid limit on property taxes, I think that it would not be uncommon to have a limit on a utility fee as well. Whether it's a percentage growth fee or dollars per, I wouldn't think it would be uncommon to have some sort of a limit. [LR113]

SENATOR FISCHER: Also in regard to NRDs, NRDs are a political subdivision, they have the power to tax. They have elected boards. If the storm water utility district would be set up, do you think it would be reasonable that there would be some kind of an elected board so that there would be representation by the people? I realize we're talking about a fee system here. But many times a fee is truly a tax. It might not be a broad-based tax, like a property tax. It seems to me the fees we're talking about here are being targeted towards certain properties. So do you think it would be reasonable to have another layer of government in a storm water utility district, and to have that layer of government have an elected board? [LR113]

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STEVE RIEHLE: I would suspect it might be a little bit different by community. If you were to consider Hastings, for instance, the city of Hastings has, I believe, elected or appointed, I think it's elected board for the Hastings utilities. And then it's a subset of city government. And then in Grand Island we do not have an elected board. The actual city council is the representatives that cover utility increases for sewer and water. And then I'd suspect in Grand Island that same elected city council board would cover the storm water utility. [LR113]

SENATOR FISCHER: Okay, thank you. [LR113]

SENATOR LOUDEN: Yes. I have a question, Steve, it's along Senator Fischer's line. If I understand this right, you would be in favor of setting up some kind of a utility district or something like that to handle this for revenue reasons. Is that correct? [LR113]

STEVE RIEHLE: For revenue dealing with the unfunded mandate as requirements...for the requirements that come onto us, and then also in the interest of fairness. [LR113]

SENATOR LOUDEN: Rather than just turning it over to the cities to run it, however they so desire? It would be better to set up some type of a utility district or something? [LR113]

STEVE RIEHLE: I believe the cities would still run, own, and operate, so to speak, the utility system. But I think setting up a fee schedule that's different than property taxes is more fair, similar to what was mandated by Grand Island, as we got some federal aid projects, in the seventies, to do some additions to the waste water treatment plant. Part of the requirement of that federal grant money was that we set up a system where we charge people based on their contribution. And that's why like the storm water utility would be based on contribution. [LR113]

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SENATOR LOUDEN: Okay. Your fee schedule would be based on contributions rather than...and then there would be credits back for quality control or something like that? What do you envision along that line, I guess? [LR113]

STEVE RIEHLE: I would envision we would look at what other communities have done. And I think it's very important that you issue credits back, similar to...it's a little harder than a water customer or an electric customer, because we can run it through a meter. And if somebody conserves water, by not watering their yard twice a day, then they realize the savings. In many communities across the state, as a part of making their water utility whole and to conserve water, installed water meters on properties. And then what they saw was everybody's water bill, generally, went down. Because when you don't have to pay, you don't care if you've got a leaky stool, or a leaky faucet, or if you water three times a day. The people in Grand Island, where we have groundwater problems with...that contribute to the groundwater, where we have standing water problems, are those that have a private well to do their sprinklers systems. Because all they've got is the pennies a day that they pay to water their yard to run the well, so they don't care. And I think that makes it a little bit harder on a storm water utility, because you can't put a meter in to measure it. It's hard to do that. And so we're glad we're not first in the nation. We're glad we can learn from other people's examples and have a system that's not first out of the gate, it's second out of the gate. And we can have some of those wrinkles worked out by other communities. [LR113]

SENATOR LOUDEN: Then you would envision some type of fee schedule would take in square feet of an area, I guess? [LR113]

STEVE RIEHLE: I would think impervious surface would be part of that. I know any communities I've looked at, nationwide, have looked at impervious surface as part of that equation, with credits for different storm water quality and storm water quantity measures that the property owner might put in. [LR113]

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SENATOR LOUDEN: Now we had a...one of the testifiers had our little circles here, you know, and that generated quite a little bit of questions. If...what would you envision, who's going to get exempt on this, are schools, public places, churches? Who do you exempt out of your fee schedule, if you set up some type of fee schedule? Or does everybody pay whether they're a church, public school, or whatever? [LR113]

STEVE RIEHLE: Within the constraints of the limits allowed by the legislation we'd have to follow, and I believe the legislation as currently drafted exempts public entities so they could not be taxed. And then the city would have to make a decision, like for Grand Island, as to whether or not the General Fund would cover that, or whether or not that would be a charge to the rest of the utility payers that are paying. Sometimes the fairest way is for everybody to pay their share. The incentive for us, as government, to sweep our streets, to keep our parking lots clean, to detain our storm water from our parking lots, or to improve the quality of storm water from our parking lots is our utility bill. That's a great incentive for us as a city. It's a good incentive for me, running the streets division, where we've got equipment that we try to store inside in the wintertime to make sure it will start so we can run it out in a snow storm, it's a great incentive to me to make sure that we don't have...we have the right kind of heat in those buildings so that we're not paying a high electrical bill. If we didn't have to worry about an electrical bill, I suspect we might not. [LR113]

SENATOR LOUDEN: Now, getting back to this who's going to be exempt, what about the local Salvation Army down there with their building, are they going to have to pay it, the local Red Cross? Because I think in that bill it was mostly public places, but what about all these other entities that rely on usually donations and stuff? How are you going to handle them if you have some type of fee schedule? [LR113]

STEVE RIEHLE: I think we'd have to treat them just as we do everybody else. The church and the Salvation Army pays an electric and a water bill, and I think they would have to pay a storm water bill. The only consideration I can remember in Grand Island

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that I've run into in my eight years there, where we've had something that was unfair to the nonprofits and such like that is the Salvation Army. If you've got trash that you want to get rid of, and you don't want to subscribe to garbage service, take it to the Salvation Army. And that's unfortunate. And we've tried to work with them on that. But on other issues, though, I think it's up to them to decide to turn the lights off and manage their electrical bill. It's up to them to manage their storm water bill. [LR113]

SENATOR LOUDEN: Now, your Department of Roads sitting down there in Grand Island, they have to pay for their water bill and they have to pay for the electric bill, too. Should they have to pay for their deal? I mean, sure, we got public places exempt, but they probably have a little bit of an inside shot here with the senators on public places because that will be some tax money that will show up. What's your opinion on that? Should they actually have to pay, too? [LR113]

STEVE RIEHLE: That's a really big philosophical question. Right now Grand Island is looking at a \$23 million project that might "dewater" the community to dry up people's basements. And that's so big it's hard to get a grasp and get a comfort level with that. This is a very big one as well, and so I don't have a comfort level with knowing the best way to handle that situation. [LR113]

SENATOR LOUDEN: Okay. Well, thank you. Other questions? Thank you for testifying today and coming up from Grand Island for us. [LR113]

STEVE RIEHLE: Thank you. [LR113]

SENATOR LOUDEN: The next would be the city of Ralston, I guess. [LR113]

DAN FRESHMAN: (Exhibit 7) Good morning. The copy machine won, so I do not have copies for everybody. (Laugh) My name is Dan Freshman. It's F-r-e-s-h-m-a-n. This is testimony presented to the Natural Resource Committee, I'm the public works director

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for the city of Ralston, on behalf of the cities of Bellevue, LaVista, Papillion, and Ralston. Here is some of the burdens placed on small communities by the phase II storm water regulations: staffing size is not large enough to delegate storm water activities; lacking staff experience and equipment to conduct water quality monitoring and testing; equipment necessary to perform storm inlet and pipe cleaning runs in excess of \$200,000 plus; the cities of Ralston, LaVista, Papillion, and Bellevue all sit geographically at the bottom of the watershed. These municipalities will receive the brunt of all quality and quantity issues; financing through property tax increases does not guarantee a dedicated revenue source for storm water activities. A storm water utility fee is a dedicated revenue source used only for storm water activities; each community has shrinking budgets that have burdens placed on current street, park, and general maintenance activities; each community has aging infrastructure that is in need of repair and struggles to fund projects without competition from another mandate...unfunded mandate. The stated communities are proponents of the requested enabling legislation. Not one of the communities has stated any plans to implement a storm water utility. The option of storm water utility as a funding source is just another tool for the community's tool box. Each of the communities currently has water utilities and sanitary sewer utilities in place that work very successfully. It will be up to each community individually to decide the method for funding storm water activities. As current president of the Nebraska Chapter of the American Public Works Association, I am aware of over 400 to 450 communities, nationwide, that currently have storm utilities in place that are working very successfully. Proof that an equitable funding formula is possible and that utilities are not unconstitutional. Thank you. [LR113]

SENATOR LOUDEN: Questions for Dan? Senator Fischer. [LR113]

SENATOR FISCHER: Thank you, Chairman Loudon. Thank you for being here today. You mentioned that nobody here today has said that they would implement this if the Legislature did pass the bill. Did I understand that correctly? They would not implement and set up a storm water utility? I think at the end you were saying, no one here today

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has said that they... [LR113]

DAN FRESHMAN: To date has done, until... [LR113]

SENATOR FISCHER: Oh, to date. [LR113]

DAN FRESHMAN: I apologize. [LR113]

SENATOR FISCHER: Oh, well. [LR113]

DAN FRESHMAN: Yeah, to date. [LR113]

SENATOR FISCHER: Oh, well, same difference. Nobody to date has said they would implement it. And that you're just here because you want more tools in the tool box, correct? [LR113]

DAN FRESHMAN: That was one of the statements, yes. I'm representing four of the smaller communities. So... [LR113]

SENATOR FISCHER: Correct. So if you have no plans to implement this, if we would pass this legislation, give me a little better reason than that you just would have another tool in the tool box. [LR113]

DAN FRESHMAN: I guess, to try and answer that question, when...I guess, the way I read that, because this was a type...these are comments from multiple people, no one has implemented a plan without, you know, this legislation being passed. I think once, you know, we know that it will be passed or was in the brunt of being passed, there are many, many plans in place that we would look into to see what is going to work best for the people that are going to be affected by this. [LR113]

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SENATOR FISCHER: If this legislation is not passed, you still have a mandate that you have to deal with, correct? [LR113]

DAN FRESHMAN: Yes, we do. [LR113]

SENATOR FISCHER: What are your plans? [LR113]

DAN FRESHMAN: To do all we can. [LR113]

SENATOR FISCHER: To do all you can in what way? [LR113]

DAN FRESHMAN: With the resources we have. In Ralston, and I'll speak of Ralston in general, we have a sanitary sewer fee. And right now some of that...it's an enterprise fund, so we're able to, you know, pipes, one's carrying sanitary, one's carrying storm. We have to juggle ourselves around. We're a smaller community, we're used to that. The problem with it is that as it grows, it only burdens us and just takes away from all the rest of the things we're supposed to be doing. And that might go into staffing, which, you know, we're a small community. Unless we enable another fee that is dedicated to be able to staff other people, buy equipment, improve infrastructure, repair infrastructure. I mean some of the pipes that we're talking about, you know, they've been in the ground a lot of years. [LR113]

SENATOR FISCHER: But you could do this under your sanitary sewer district, couldn't you? If you're talking about pipes, and runoff, and...couldn't you do it under your... [LR113]

DAN FRESHMAN: None of our... [LR113]

SENATOR FISCHER: ...under the district now and increase...instead of establishing a new layer of government,... [LR113]

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DAN FRESHMAN: Which we're not trying to do. [LR113]

SENATOR FISCHER: Are you in support of the bill that was introduced last session that deals with this? [LR113]

DAN FRESHMAN: Yes, we are. [LR113]

SENATOR FISCHER: So you, contrary to what...my questions to the gentleman who was up before you, from Grand Island, who said, I guess I understood him to say that, you know, yes, maybe there should be an elected board, yes, maybe there should be a cap, would you support that? [LR113]

DAN FRESHMAN: The way I view that for Ralston, because I think it's going to be different with every different community, starting with Omaha, Lincoln, going down to Ralston, because we're probably one of the smaller areas around, 6,300 people, about a mile and a half square. The way I would see that for Ralston is that we would tag off of our sanitary end, which is approved by our city council. But the fee is the key to be able to go out there and keep that infrastructure as being mandated--clean, in good shape, to improve it. We have a lack of storm water infrastructure in Ralston. We have 30 lineal miles of sanitary sewer, we have less than 10 of storm water, same size area, just as an example. [LR113]

SENATOR FISCHER: You don't consider it another layer of government, even if there is not an elected board, you wouldn't consider it another layer of government that a city is able to implement a new fee on targeted property tax owners? [LR113]

DAN FRESHMAN: I do not. I would see it as being a fee, just as the water has a fee, as the sanitary has a fee, as hope that the storm water would have a fee, even a trash fee. [LR113]

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SENATOR FISCHER: But you wouldn't want to have that fee be paid by water, by the sanitary. You'd want a storm water utility district? [LR113]

DAN FRESHMAN: Yeah, yeah. And again, going back to Ralston, I mean, as far as a layer of government, I don't think we need to create another board. I think our city council would handle it appropriately, as they do our sanitary in that the sanitary and the storm would be of their discretion, and those rates would be held to a minimum for the people paying the bill. [LR113]

SENATOR FISCHER: Yesterday, we were at a hearing at the Papio NRD, and there...I'm trying to find my notes here quickly. There's a group of partners within the different cities. Are you a partner in dealing with solutions and flood control,... [LR113]

DAN FRESHMAN: Yes, we are. [LR113]

SENATOR FISCHER: ...in the metro area? [LR113]

DAN FRESHMAN: Yes, we are. [LR113]

SENATOR FISCHER: At that hearing, there was support by that partnership that the NRDs be given the power...that that particular NRD be given the power to bond in order to see that there is flood control within that basin. So I assume you would be supportive of that? [LR113]

DAN FRESHMAN: We belong to that partnership. And we support the partnership. Again, we're a very small cog in the wheel. But, you know, something has to be done. And whether, you know, it's regional detention, and that is probably... [LR113]

SENATOR FISCHER: Which are dams. [LR113]

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DAN FRESHMAN: Correct. You know, there's controversy about that. Ralston, speaking for Ralston only, because I'm representing multiple jurisdictions here, you know, we have to see how that affects us directly for us to make a conscious decision. But, yes, we are a member of the partnership. And we do support the partnership. [LR113]

SENATOR FISCHER: At that hearing yesterday, it was my understanding that cities didn't want to have to tax to deal with that. They didn't want to have to bond. They wanted that more regional perspective, and therefore allow the NRDs to do it. I guess, what I'm hearing today is now cities want the ability to tax for another water problem that they are facing, which I think is somewhat tied into the flood control problem. I know what you're going to say, not tax, you want a fee. [LR113]

DAN FRESHMAN: Actually, what I was going to say, the regional detention and the storm water fee are two things, in my mind. I mean, we need a regional system to take care of the growth and the water quantity issues that happen from time to time. I mean it's all about worse case scenario. The storm water fee that I'm...how I place that in my mind, right, wrong, or otherwise, is that this is for the public works director of the city of Ralston to be able to adequately meet the unfunded mandate. And that's whether it be staff, equipment, man hours, infrastructure repair, replacement, any of that. So in my mind, you know, the NRD is going to need what they need to do to bond or build or have an authority to be able to build these regional detention, you know, areas. In my mind, you know, it's my responsibility for the city of Ralston. I need a fee to help with the unfunded mandate that is being imposed on us, locally. [LR113]

SENATOR FISCHER: And I don't disagree with you on the need for regional support for that basin. What I find interesting, though, was that yesterday cities weren't willing to have a tax or have a fee to take the NRD out of it, to have a tax, to have a fee to pool that money in order to deal with a regional problem. But yet, because they just thought, you know, that wasn't the way to go, it's not fair for their citizens, but yet today we're

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going to establish a new fee on property owners within your city. I guess, I'm thinking do you not just want to call it a tax? Do you not just want to use the existing forms of government or districts that you have to deal with this? And that's why we're establishing a new one in order to, I guess, target certain entities? [LR113]

DAN FRESHMAN: Well, I guess my answer to your question, and I'm maybe confusing the matter a little bit. I mean, the fee is, obviously, going to be an overall fee, which is probably going to address everything we're talking about. And, you know, there will be monies that would trickle down to the different jurisdictions for the local items. But I think the dedicated fee, instead of tax, is the most important of what we're talking about. I think the dedicated fee for storm water utility is the most important. I mean, you could probably call it anything you wanted, but it needs to be a dedicated fee for storm water utility. [LR113]

SENATOR FISCHER: And believe me, I have no argument with that when it comes to other issues, so thank you. [LR113]

DAN FRESHMAN: Thank you. [LR113]

SENATOR LOUDEN: Senator Kopplin. [LR113]

SENATOR KOPPLIN: Thank you. Of the communities that you're more or less speaking for, are any of them tied into the sanitary sewer system of Omaha? [LR113]

DAN FRESHMAN: I believe all of them are. Yeah, yeah. [LR113]

MARTY GRATE: Yes. [LR113]

DAN FRESHMAN: We...Ralston is. [LR113]

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SENATOR KOPPLIN: Okay, all right. And I ask that because we're talking about fees. And before you get concerned, I don't envy your job, with an aging infrastructure of everything in Nebraska, we need to take care of it and somebody has got to pay the bill. And you're going to get hollered at for whichever way you go. But in order to fix some of the issues with the regional sewage disposal out of Omaha, all the users are going to pay a fee of some kind, which could go up as high as \$50 a month, I understand. So now we're going to attach another fee on top of that, on the same bill and saying, by the way, you have to pay another 10 cents or 11 cents, I don't know, to take care of the storm water issues. Why not just simply go to the property tax and say, we have an aging infrastructure, it's got to be repaired; this is what it's going to cost? Wouldn't that be as easy? [LR113]

DAN FRESHMAN: Again, I think the dedicated storm water utility fee is the most important. And I think I'll let Marty Grate, with the city of Omaha, talk to that more, because again, you know, we're smaller than some subdivisions in Lincoln and Omaha. So... [LR113]

SENATOR KOPPLIN: Well, that's true. But if I live in Ralston, my piece of property is just as big as the piece of property in Lincoln, and I'm going to be paying on it. [LR113]

DAN FRESHMAN: Well, and I guess, you know, just off the top of my head, and this may be right, wrong, or otherwise, but I think the whole emphasis is on fairness. Because somebody and everybody is going to pay for this. And if the homeowners, if the residential houses are not the main sources, and if it is the businesses, and of the businesses, you know, it's the larger parking lots, or the businesses with more hazardous waste that probably need to be monitored more of the time than the homes and so on and so forth, I think that storm water fee dedicated to is a more practical way of doing it. If you do the property tax, it's going to have to be across-the-board. And I don't...you know, again, I'll use an example. We just redid our sanitary fees with the fairest amount to charge people. We have a lot of retired people that live in Ralston.

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We're about two-thirds residential and one-third commercial, you know, from light to heavy. And what we did is, you know, we have a lady in town comes to all our council meetings, and she's very active in the community. And our objective was to have her pay her fair share and not be paying the flat rate we had been charging that allowed the married couple, or three or four people living in a home get by for a lesser dollar amount. So the emphasis was that, and we have done that. We just went for it with that, and we're going to see how that works. But I think it goes back to the dedicated and the fairness for the people, because there's going to be some and all of the people that pay for that. So if I'm a heavy industrial user, and I have a large parking lot because I'm a large company, I'm going to pay more. But at the same time I should. [LR113]

SENATOR KOPPLIN: Okay. [LR113]

SENATOR LOUDEN: Other questions? Senator Carlson. [LR113]

SENATOR CARLSON: Senator Louden. Dan, in listening to the testimony yesterday and then listening to you today now,... [LR113]

DAN FRESHMAN: I'm a little worried about that. I apologize for not being there yesterday. (Laughter) [LR113]

SENATOR CARLSON: Well, yesterday, with the NRD, using a common levy to raise money to deal with storm water, that's the way I understood that that would work. But you're saying in Ralston, in addition to that, you need several more water utility structures to charge a fee. So in the total scope of dealing with this problem, you need two sources of income. [LR113]

DAN FRESHMAN: No. I misspoke. The source of income was through the NRD, because we're part of that group. So I apologize for that. [LR113]

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SENATOR CARLSON: Okay, thank you. [LR113]

DAN FRESHMAN: Yep. I apologize. [LR113]

SENATOR LOUDEN: Other questions? Well, seeing none, thank you for testifying, Dan. [LR113]

DAN FRESHMAN: Thank you. [LR113]

SENATOR LOUDEN: Good morning. [LR113]

MARTY GRATE: (Exhibit 8) Good morning, Senator. [LR113]

SENATOR LOUDEN: We get to visit with you again, today? [LR113]

MARTY GRATE: Yeah. And since I was there yesterday, I guess it's my job to try to make sense out of any differing messages that we received. Again, my name is Marty Grate, M-a-r-t-y G-r-a-t-e. I'm the environmental services manager for the city of Omaha. I certainly thank you for the opportunity to testify as part of LR113. Last year, I brought to you a letter from Mayor Mike Fahey, and a unanimous resolution from the Omaha City Council, that conveyed Omaha's support for legislation that would provide a different funding alternative to Nebraska communities struggling to meet these unfunded federal mandates with the Clean Water Act. Storm water utility enabling legislation remains a high priority for the city of Omaha. The speakers before me have done a good job of explaining LB534, with the slight exception maybe of new district versus new utility fee, and given you an overview of the statewide needs for storm water funding to address these requirements of the permits that were issued by the Nebraska Department of Environmental Quality. Yesterday, I did have the chance to speak to you about Omaha's pressing needs for flood control, storm water management, and about our \$1.5 billion Combined Sewer Overflow Plan. Today, what I want to focus on is again

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the funding alternative for urban storm water management, and maybe clarify a few of the issues that have been discussed this morning. In Omaha, storm water management currently lacks a dedicated source of funding, and the program elements rely on a variety of taxes and user fees. Even as we embrace these new low-impact development techniques, we are discovering every day a whole new set of associated operations and maintenance challenges that will require funding. I have been involved recently in numerous community meetings with respect to the CSO program, and the public is very concerned about how we will locally fund these increasing federal mandates. Many residents are interested in an alternative to property tax funded programs. Importantly, many urban residents and business owners want a system that can offer credits for individual efforts that reduce urban runoff and pollution at a lot level. In the past we've heard from a lot of the opponents of LB534 that a contribution-based funding mechanism is somehow unfair to their constituencies, but a user fee system offers the best opportunities for storm water credits and incentives. The general public is grasping the concept of paying for hard surfaces and demanding a system that makes the big box stores and other similar users accountable for their runoff. Such systems also can provide incentives for low-impact development and credits for individual green solutions. I want to again remind you that LB534 is only enabling legislation and that we are not asking the Nebraska Legislature to determine how these mandates must be funded. Communities like Omaha, that are faced with unfunded federal mandates, deserve a local authority to evaluate and select funding mechanisms that, on a community level, are deemed most fair and equitable. We're not asking for a free ride. We're just asking for the chance to decide locally how we'll pay for our trip. I want to again thank you for the opportunity to testify here. I'd be happy to answer any questions you have or to give you an idea of how Omaha envisions we might use this authority. [LR113]

SENATOR LOUDEN: Questions for Marty? Senator Christensen. [LR113]

SENATOR CHRISTENSEN: Thank you, Chairman. I guess, I hate to go both routes, what we talked yesterday and what we're talking today. What's your preferred route?

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[LR113]

MARTY GRATE: I think...I don't think it's a matter of either/or route. And I guess, that's one of the things I was thankful for the opportunity to explain. Yesterday, what we were talking about was bonding authority for the NRD, to bond capital projects that were geared to both water quality and water quantity, but we're talking more about the construction of significant structural facilities across the region. In my mind, the way we would utilize, as a region, that authority is to focus on these large regional facilities that had widespread benefits. What we're talking about today is enabling legislation for local communities, like Omaha, like Ralston, like Bellevue, like Papillion, that also have ongoing operation and maintenance needs related to storm water that we don't have a dedicated funding source for. When we drove around the Omaha area yesterday, I showed you some of the facilities that we operate and maintain. If those facilities are associated with sanitary sewers, with sewage, we have a funding mechanism, a utility to do that. If they're dedicated solely to storm water, we don't really have a system to fund those. A lot of those are going unmaintained, or undermaintained. And as we continue to take advantage of more of these low-impact development practices, we spread out into newly annexed areas where they've started using these, we're finding as a public works organization that we're inheriting a huge number of new maintenance responsibilities that again we can't use our waste water fees for, we're collecting that from a whole different user base, under a different nexus, a different logic. It's just not appropriate to use those funds. What we're really stuck with is then trying to compete at the General Fund trough with fire trucks and police officers to maintain storm water facilities. We don't do a good enough job, and it's going to show in water quality, and we're going to end up in the same place we are with our CSO program, treating at the end of the pipe. [LR113]

SENATOR CHRISTENSEN: Okay. [LR113]

SENATOR LOUDEN: Senator Kopplin. [LR113]

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SENATOR KOPPLIN: Thank you. Basically, I'm hearing three different programs, because I heard the testimony yesterday. A lot of it focused on quality, and I didn't feel we were getting enough dialogue on quantity. The quantity issue, to me, was more of the NRD in their bonding authority to be able to do some of those kinds of things. So that's one issue, the quantity. Then we're talking about sanitary sewage infrastructure, which is going to be a fee on all the users. And since it's regional, that's a regional use. And now we're talking about a third fee of how to deal with the quality or runoff water. Do I have the picture right or not? [LR113]

MARTY GRATE: If you're wrong, I'm wrong too, because... [LR113]

SENATOR KOPPLIN: Okay. [LR113]

MARTY GRATE: ...you're on the same wavelength with me at least. [LR113]

SENATOR KOPPLIN: Okay. And the bill that we're talking about today, basically, says we're dealing with the storm water issue. And it would allow cities to develop a separate fund. Even though I, as a property tax owner, am going to pay my property tax, I'm going to pay the fee for the sanitary sewage, and I'm going to pay a fee on storm water runoff whatever I do, because I water my lawn more than Senator Christensen does. I understand that. (Laughter) But I'll bet it's greener. (Laughter) No. The point is, I feel sympathy for you, because I'm still going to have to dig down in my pocket, no matter what we call these three things. But to me there doesn't seem to be any alternative but to do that. To wish that it's not (sic) going to go away is not a possibility, correct? [LR113]

MARTY GRATE: Senator, what you're saying is what I, and in the job that I have with the city, have gotten used to going around and telling people, particularly with respect to our CSO program. There is no cheap solution. We're not getting away from this, folks.

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We're going to spend a boatload of money on this; \$1.5 billion is a lot of money. And we have looked at this up, down, and backwards. There are hundreds of other communities across the nation that are going through the same thing, storm water. What we're trying to do with this is to come up with a program to get out ahead of it, to try to control it without some of these more expensive structural programs, to minimize the cost. But it's not going to be cheap either, yeah. And what we're trying to do is come up with funding mechanisms that are reliable, that are sustainable, that can avoid pollution wherever possible as opposed to trying to treat it after it's been created. And this is really our best program. Is it perfect? Is it going to be perfectly one-to-one, cause and effect? No, it's not. But it's a whole lot better in terms of holding parties responsible for pollution than would be a property tax basis. There's no nexus with that. Certainly, we can spend more and more money on administration of a program like this to get a finer detail of accountability, but that's all a judgment. At some point in time you're spending more money arguing about who should pay an extra dime than you spend, you know, getting money. So it's a balancing act in there. But we truly believe that this is the best approach to go to bring equity into the system and to generate the funds in a manner that can allow us to avoid bigger costs in the future. [LR113]

SENATOR LOUDEN: Other questions? I guess not. Seeing none, thank you, Marty. [LR113]

MARTY GRATE: Thank you. [LR113]

SENATOR LOUDEN: Thank you for testifying. Pleasure listening to you again. Next testifier. Before...how many testifiers are left on this bill? Three, two more? Okay, we're in fine shape. Go ahead, Larry. [LR113]

LARRY RUTH: (Exhibit 9) Senator Louden, and members of the committee, my name is Larry Ruth. And I'm here today representing four different clients: Chief Industries, out of Grand Island; Heartland Community Bankers Association; Nebraska Association of

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Commercial Property Owners; and the Nebraska Press Association. I also represent other clients opposing the bill, but these are the ones I'm signing in for today. And I do have a list of folks who took a position against LB534, about 55 of those groups, and I would like to have this be distributed, too. I come today to want to give you a little bit of a different perspective. Obviously, we appear in opposition to the bill. It's a little bit difficult in an interim study because we're not supposed to talk about necessarily the bill, we're talking about the subject matter, the overall subject matter. I don't want to be going into specific aspects of the bill, except as perhaps it might help to show the issue that I'm trying to elaborate on. I notice, as I went to sit down, I wasn't fighting with anybody else to sit down. It reminds me of yesterday afternoon. I sat through those five hours also. And the second witness and the third witness were tussling as to who got to sit down first. I don't know if you noticed that. It turned out to be location, location, location, that is who got here first and timing, that is who got here first. I don't have to work with that today. I will also say that I'm not going to talk about tools in the tool box. Senator Wallman, you weren't there yesterday, but we had a little bit of a chat on that. And I don't intend to talk about a level playing field, so maybe you...thank you. Okay, Senator Hudkins. I don't intend to go through the different issues that I raised before. I mentioned that for Senator Schimek, when we started, because I had a rather detailed commentary on this bill last year. But I think something happened yesterday that you all recognize, and that is we've begun to see a much larger picture here. It isn't just a picture of a storm water fee for storm water purposes. It's a much larger issue. And certainly the area, Senator Kopplin, in your interim study and on that area of western Douglas County, it raises a number of storm water questions, similar to what you're looking at today, and yet a little bit different. It's complicated. But I want to focus on several things today. And one of them is the stated justification for the storm water fee from some of the proponents here. That is because of the Clean Water Act mandating the need for handling more storm water in a better way. And the penalties are going to come up if we don't do that. From that justification, based upon federal law, an unfunded mandate, I've heard that a couple of times today, and compare that with what the authority actually allows in the bill and in the way I'm hearing it expressed today,

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because the two are a little bit different and it's significant. And, Senator Fischer, and, Senator Kopplin, you both got on this a little bit by understanding that we're talking about how you fund all of the problem, not just necessarily the storm water problem. Mr. Grate was up here just a few minutes ago. And I didn't know that he was going to bring in the \$1.5 billion cost of separating the sanitary sewer system and the storm water sewer system in eastern Omaha. But that just highlights a question and a problem that we see with this kind of an approach. The bill, as introduced, and every bill that I've seen thus far, I've seen three of them, I think, all allow for the authority, the fee authority to be used to maintain and improve existing storm water systems. And I would say that the language allows it also for existing sanitary systems. In talking with Mr. Grate on a previous occasion, he said it's almost impossible to separate out the cost of the current storm water system from the new storm water system. And I take him at his word for that because we are talking about coordinated systems, consolidated systems. So on the one hand we have a justification based on a new expansion, new improvement. But we also have this old system, like you said, Senator Kopplin, the old, antiquated system that needs to be corrected, needs to be fixed. For our position we're saying that we know the poison of the old system, that is the property tax system. And we're willing to take that poison. We don't like the new approach of having it based on fees because of some unfairnesses involved, some lacking of safeguards, and just some poor public policy. But I do want to emphasize the fact that under the bill as introduced, this storm water fee would be available, in my opinion, would be available to correct, to work on the problem of the \$1.5 billion that we're talking about in Omaha on the sanitary system. You can see why we would be concerned about that. My goodness. We have the great expense of an antiquated sewer system in Omaha. And then we really want to look carefully at how this fee is going to be developed. Because if it's unfair, it's going to be...the potential is there for a significant amount of money to be raised for that purpose from the fee. I just raise that. Second, I would also say, as I did in previous testimony, that the support for the proposal seems to ignore the current system. And I think Senator Kopplin or that Senator Fischer and perhaps others have talked about this. The bonding authority for the city's, the room they have in their levy authority, and

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particularly in the NRDs, my goodness, yesterday we talked about them actually reducing their budget this last budget session, and how they have...I think it's point something 8, .38, and their ability to go up to 4.5 cents. Did I hear that right yesterday? It was something like that. They have authority to do that now. But specifically in current law, and I pointed this out before, and I really don't know the answer to it, I'd be very interested in getting an answer from the cities. Current law mandates, current law mandates that when a sewer system is not adequate to meet the requirements of law that a city impose an additional 7 cents. And I'll just read that to you. It's...as I read it anyway, it occurs in 18-501, In the event the present or proposed sewage disposal system of any city or village does not comply with the provisions of any other law, that to me would mean federal law, relating to sewer systems, sewer disposal, or water pollution, such city or village shall levy each year a tax of 7 cents on each \$100 of taxable valuation. Now, maybe they're doing that now. I've asked the question, are you doing that now? And I haven't gotten the answer yet. But maybe we should get that answer. So if it is a mandate and they haven't done that, then they are not following what is required by state law. Yesterday, one of the things we heard a lot about was LIDs, low-impact development. I have to confess, I didn't know much about this until yesterday. And I noticed there was a lot of interest on the committee. But it's obviously a factor in the discussion. Mr. Lyle Christensen (phonetic), of HDR, talked about conducting modeling scenarios with the future built out, looking at the different costs. And certainly a new fee is not warranted until we know whether a reliable study says how those costs would be useful in that area. But, Senator Kopplin, I do think it does raise a question, and that is, when you look at the LID approach to things, you're putting additional expense probably on the property owner, at least as it relates to the pervious concrete. You have questions of replacement and whether that's going to be something that is really a long-range solution, and also whether or not how much it costs the property owner? I would comment on the intention to implement. I've heard a couple of cases...a couple of comments today about this being only enabling legislation. I've used that myself before. It is only enabling legislation. But there really isn't much of a question here, but what if it's there, there will be a considerable use of it. So let's recognize that

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this is a request for authority to do something which many cities will do. And it's not just to put another tool in the tool box, as has been said, it's to use that...it's to use that device. Yesterday, we heard a lot about the NRDs, that was what it was really mostly about. And, of course, that is relevant to today because we're looking at a fee as the potential for additional revenue. And yes, it was the Papio that...I have my notes here, .038 and can go up to 4.5 cents. And Senator Friend and Senator Fischer both suggested that the NRD could perhaps coordinate and go to the cities and raise the necessary money, if they don't want to levy anything on their own. And, Senator, if you're looking for ways to mix and match here in how this might work with the NRD in Omaha, that seems to have some potential. Let the NRD coordinate it. If they don't want to impose the tax, levy additional levy, go to the different partners. I've been hearing a lot about the partners here. And they all seem to be getting along real well together, and that's really good, because it probably is a regional problem. Let them raise the money and then let the NRDs do it. The problem with that, of course, is the cities don't want to give up that authority. To my way of thinking, there's a little bit of...and you see that with Douglas County, too, to give authority to the NRD to do something the cities pay for, I can see why they might want to be a little bit careful on that. That's not something we would want to do. But if you're looking at a regional approach to correcting something and using existing abilities to pay and opportunities to pay, that would seem to be the way you could do it. John Winkler testified yesterday, and he was with the Papio NRD, the general manager. And he said, I think Senator Louden said that, if Douglas County raised something by 1 cent, I guess that would be levy, and the NRD used their authority, would it raise enough? And Mr. Winkler's comment was, "Under current authority, we can finance it, yes, we can." I don't know if he meant short-term finance, long-term finance. But I'm saying that there is enough ability there with the cities to do that now, if they wanted to do that. Dean Edson gave some good testimony yesterday. And I thought Dean is always a good one to bring things down to a real practical level. And, Senator Fischer, I think you pointed this out. [LR113]

SENATOR FISCHER: Are you telling me I talked all the time yesterday, Larry? [LR113]

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LARRY RUTH: No, no, (laughter) I'm saying you asked a number of good questions yesterday,... [LR113]

SENATOR FISCHER: (Laugh) I'm sorry. [LR113]

LARRY RUTH: ...just as you have today. But yesterday, you said, look, if we're talking about surface water, aren't we talking about this being perhaps a state problem then? It's not a local problem. In part, it should be a state problem. And Dean pointed out that the Natural Resource Development Program is a program that is approaching it from the, I think, DNR. But he also pointed out that the DEQ has storm water grants, and that it's doing it now. And, of course, in the last couple of years Senator Schrock had a bill to raise some money that way from the state General Fund. And so there is a fledgling amount of support from the state to help out with this problem. We've had a lot of focus on the Papio and talked about that. And I don't want to raise that too much. But it did put into sharper focus the effect on the property owner with the fee. And, Senator Christensen, it reminded me of your comments last year on this bill, when I think you ended up by saying, "It looks like paying the same tax plus the fee." And that goes to the question of if you have a fee, is it going to reduce the property tax? No, I don't think so. It's going to redistribute things. Senator Kopplin, or rather, Senator Carlson, I think you talked a little about let's talk about what's the difference between this fee and property tax? Boy, isn't that a great question, because that really is what we're talking about here. And I just have a couple of comments on that, then I'll close. Well, observations are this, where does runoff come from? There are a lot of studies that seem to say it's so much from residence, so much from commercial, so much from public. And I don't necessarily differ with any of those. There is, of course, runoff that comes from further upstream, outside of the jurisdiction of the city. And that's one piece of runoff that we sometimes neglect to talk about in this particular case because a lot of the water coming down through the Papio is started up further and it's come from impervious and pervious locations there. But it's very difficult and it causes our clients a

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great deal of confusion and concern because of the difference on runoff from property with impervious surface. Some have best management practices to adjust for that, perhaps. But my goodness, here's one of the things that we really are concerned about, and that is the great discretion that is authorized or allowed to a city on where they give adjustments, how they give the adjustments, what exemptions do they give? Every exemption that is given is that much more to be paid for by those who are without the exemption. And the adjustments, I don't think it's going to be quite as simple as has been suggested here, that you put it into place and you let it kind of work, and it's a one-time cost. I think it was, Senator Fischer, some of your thoughts, this is going to be a point of constant, constant irritation, and adjustment, confusion at the local level. You're putting on...you're allowing the city to take on a burden it really doesn't need to have, and that is to try to figure out how much of the water running off my piece of property, and the way I account for that should be adjusting a fee. My goodness, that's going to be difficult. And, Senator Fischer, it goes back to who is going to pay this in the end? Ultimately, it will get passed on, as you said, Senator, to the folks that have the businesses or others that can't make those changes. Let me tell you, there are a lot of folks who can't make the changes to correct their parking lots and to correct their runoff. I think of the church where I go to, and the little churches where a lot of us all go to. And sometimes the older the church, the harder it is to correct the problem. You've got a piece of concrete that goes out as far as you can, and you're trying to keep people on the concrete, you don't have enough room to make a holding pond or to dig up the concrete and have some kind of a swale or any of the other things that we allow for adjustments. So those are going to be the fights that you are going to see at the local level. Right now, as much as we don't like the property tax system, and believe me that's all I hear from clients as well as you, we do know our poison. We don't like it, but at least we know what it is. And the discretion that is allowed in this kind of approach is something we really disagree with. At least with the property tax system you can appeal, you can make your best argument to somebody. You have something in process, a process by which you can go to the county Board of Equalization for a change. And as bad as those procedures are sometimes, as much as we don't like them, as much as we

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even want to change them right now in this Legislature, it's something that has been around for a long time. And we would put our support in that direction. Thank you.

[LR113]

SENATOR LOUDEN: Well, Larry, thanks for the summation from yesterday. (Laugh) Questions for Larry, for Mr. Ruth? Senator Carlson. [LR113]

SENATOR CARLSON: Senator Louden. Larry, in listening to what you had to say today, and then I reflect back to Nicole, representing the city of Lincoln to start this hearing today, she handed out some material. One of those involved a graph showing the percentage paid by residential versus nonresidential. You're representing a group here that's basically nonresidential. However, Boys and Girls Town is, I notice, listed on here. And they were a group yesterday that was...indicated in favor of the partnership, and seemingly in favor of authorization by the NRD to bond and levy a common levy across-the-board there for dealing with this storm water runoff. But if I go back to the graph that shows 70 percent of the cost currently would be handled by residential, and 30 percent by nonresidential. And you're representing, in a sense, nonresidential. Do you agree with that graph that we looked at today? And shouldn't...however it's paid for on storm water, somehow it needs to be borne more by the people that cause it. It is residential caused 70 percent. [LR113]

LARRY RUTH: Well, Senator, I don't know the answer to the graph that I haven't seen. And I would be happy to look at that and maybe get back to you on it. It is...I'm believing the information that they've provided to you, that it's 70, but I can't answer that. I really don't know the answer. In other words, I don't know what the graph represents. On the question of should it be borne more by the people that have more runoff, in part...that would be handled in part by the property valuation, not entirely. We don't have a fair system, I mean a completely fair system, one way or the other. So I don't know the answer. [LR113]

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SENATOR CARLSON: Okay. I guess I don't understand how handling it with property tax is in a sense dealing who contributes most. I don't know that we can know that from values. But property tax is an evil to most of us. [LR113]

LARRY RUTH: Yeah, well we do the same thing, of course, with police protection. You don't want to have a difference with police protection. Your property tax value isn't based upon how often you call the police, or whether you are in an area that has high security or low security issues. So the property tax is not perfect for the providing of a lot of different services by the government and I understand that. [LR113]

SENATOR CARLSON: Thank you. [LR113]

SENATOR LOUDEN: Other questions? Senator Fischer. [LR113]

SENATOR FISCHER: Thank you, Chairman Louden. Thank you, Mr. Ruth, for being with us once again today. You talked about...that we're ignoring the current taxing system with the proposal of this bill. That cities already have bonding authority. Do they have building funds, cities, like school districts have building funds? Do cities have building funds where they can tuck a little money away to take care of their infrastructure? [LR113]

LARRY RUTH: Well, I'm not going to purport to know what cities can do. [LR113]

SENATOR FISCHER: Okay. [LR113]

LARRY RUTH: And I didn't say that you were ignoring the current law, I said the proponents sometimes don't talk about their own authority to view things. And that's what I was raising. [LR113]

SENATOR FISCHER: Do you know where the different cities, especially maybe the

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gentlemen and ladies who came forward today, where their levies are? [LR113]

LARRY RUTH: No, I don't. [LR113]

SENATOR FISCHER: And you don't know if the cities have levied that additional 7 cents that you say is in statute. I don't question that, but that you say is in statute that they have to, that they shall impose that? [LR113]

LARRY RUTH: I don't know the answer. I've asked the question a couple of times, I've never been given that answer. [LR113]

SENATOR FISCHER: If there's any cities listening to this question, if you'd like to get this information to me, I'd appreciate it. Do you know if any cities have received any of those DEQ storm water grants? [LR113]

LARRY RUTH: Only anecdotally. I believe that there are folks from the Department of Environmental Quality here today. And my assumption is that there have been some that have been issued. I'm not sure...it's a relatively new program, so I'm not sure. [LR113]

SENATOR FISCHER: Okay. [LR113]

LARRY RUTH: Very new program, actually. [LR113]

SENATOR FISCHER: You say that under this study, where we're looking at setting up these storm water utility districts, that if that would happen, we would be lacking in safeguards. What do you mean by that? [LR113]

LARRY RUTH: Well, the safeguards that I see in the property tax system are the ability to go the county Board of Equalization and to challenge the adjustment, the value, you

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call it the adjustment, I guess, over here, the ability to appeal that if there's a problem, and to have some kind of more structured way rather than to just say the city may give adjustments, the city may exempt. And I'm not sure exactly what the status of the bill is now, since it was offered, and what exemptions Senator Schimek is looking for. I know there was an amendment that was offered. But the different exemptions, for example, have been going back and forth with each bill that comes in. Sometimes there's an exemption, and sometimes there's not an exemption. And I'm not even sure exactly what it is. But the whole notion of giving adjustments and how you go about getting an adjustment, how you got about appealing it if you don't get the right adjustment, and then the costs that can be on the fee is troublesome. [LR113]

SENATOR FISCHER: You started out, you talked about the unfairness of the fee system. I had to smile, because looking through your list of people who are opposed to this bill, and you mentioned some of the clients you are representing today, it was easy to see that, yes, you are representing your clients when you believe that the system is unfair. I would point out that all of the cities that came forward today, I guess with the exception of Lincoln who brought something on what a possible fee system would be, none of those cities were ready to say what the plan was, that they would have for a fee system. Would you like to respond to that before I continue? [LR113]

LARRY RUTH: Well, that's some of the ambiguity there and the breadth of the discretion that really gives us pause. And that's exactly why we have...I talked about safeguards. At least we know the certainty of the property tax system. And giving that kind of authority to the cities would be the uncertainty that we just greatly oppose. [LR113]

SENATOR FISCHER: I would tend to agree with you on that, because what bothered me earlier, too, was that, you know, we pass this, nobody is interested in, necessarily you know, implementing it right away, it's just going to be another tool. And you guys go ahead and pass it, and then the cities will decide what the plan is going to be. I don't

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know if I'm ready to do that. But I also have a problem with looking at some of the numbers and some of the figures here when you look at where storm water runoff comes from. And, I guess, you could put it, who's responsible for it? I happen to think we're all responsible for it, but if you look at who's responsible for it...I know you haven't had a chance to look at the handout by Lincoln. And I know you're representing many businesses and commercial interests, but there are two examples of commercial property on here, and one is called Downtown Commercial, and the other is just Commercial Property. One has...the Downtown has a higher property tax than the other one, but yet when it comes to the storm water fee, the Downtown is significantly lower than the second, Commercial Property. So, if that's the case where you're going to have commercial property that has a higher property tax pay a much smaller fee, would you like to comment on that? [LR113]

LARRY RUTH: There are great aberrations in both systems and great differences of treatment. I don't purport to say the property tax system is fair and simple. We know that's not the case. All I'm saying is that I think the alternative that we're seeing here is less fair and more complicated. [LR113]

SENATOR FISCHER: Thank you. [LR113]

SENATOR LOUDEN: Questions? Senator Hudkins. [LR113]

SENATOR HUDKINS: Larry, I was wondering all the way through your testimony, and in fact I was going to ask you, which would you prefer? And then you took the wind right out of my sails with your very last statement. But looking at the list of principles who are opposed to a fee, isn't...there's lots of parking lots here and buildings. Would you disagree that that's where most of the problem comes from? [LR113]

LARRY RUTH: I don't think I have enough information, personally, to make an opinion on that, Senator. Certainly, parking lots are a significant contributor, likewise just plain

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roof space, because a lot of places have a relatively small parking lot but a larger roof space. So I can't say parking lot is where most of it comes from. I don't know the answer. [LR113]

SENATOR HUDKINS: And I would say that as far as the residential people are concerned they have yards that are pervious, but they put fertilizers and weed killers and whatever else on their yards. And the buildings, we heard this morning that the problem isn't quantity, it's quality. And I think you said one other time something about pigeons. (Laughter) Don't... [LR113]

LARRY RUTH: I don't think I said pigeons; that might have been Loy Todd. [LR113]

SENATOR HUDKINS: Somebody said pigeons. And so if you have the fecal material coming off your roof, then there's a problem on that side. So everybody is helping to contribute to the problem. And so it is, I think, everyone's desire that we come up with a way to address this unfunded mandate in as equal and fair and equitable, and what's fair isn't always equitable, as process is possible. And I don't know, just thinking off the top of my head here, and that gets me into trouble, would there be...and the administration would be horrendous, would there be any desire to say, okay, half of it comes from property tax, half of it comes from a fee? [LR113]

LARRY RUTH: I can certainly talk to my clients about that. We have a very large coalition, as you can tell, and they go from private groups, to public groups. That would be something that I would want to talk with others about before I would comment on that, personally. [LR113]

SENATOR HUDKINS: Thank you for being here. [LR113]

LARRY RUTH: I appreciate it. And incidentally, we're talking about aberrations and how things aren't what they sometimes appear, how about the residential owner and how

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they may...maybe are not causing the same amount of problems, I just have to reflect on coming to work a couple of days ago in the middle of the rain and the automatic sprinklers were on. And the water that was running off the yard into the gutter. And I just said to myself, you know, it isn't just commercial property that has runoff, sometimes there are some residences that don't do the best job also. And then when you probably have a really, really green lawn, Senator Kopplin, like you have, (laughter) and then you look at the amount of fertilizer that's put on to make sure you have the really, really green lawn,...well, I can see some heads shaking. Maybe I better quit it now. Thank you very much. [LR113]

SENATOR LOUDEN: I have questions here, Larry. This list you handed out, we had someone from Omaha, and I suppose he was representing the city council. Then you're representing the Greater Omaha Chamber of Commerce that's against... [LR113]

LARRY RUTH: No. Let me be real careful about that, Senator. The list you have is the list of principles, that is people who have registered lobbyists, principles who agreed to have their name on the list in opposition to the bill you have in front of you. So the Omaha Chamber of Commerce, if that's listed there, agreed to have their name on that list in opposition to LB534. And I went out to them all, and I said, I'm going to distribute this list again; if you have any problem with that let me know. I didn't hear any response. [LR113]

SENATOR LOUDEN: Now, how do we correlate that with the city of Omaha having a representative here today to speak in favor of some other type of funding? [LR113]

LARRY RUTH: Sure. I think two different organizations. The city of Omaha is the government representing the city. And, I believe, you're referring to the Greater Omaha Chamber of Commerce? [LR113]

SENATOR LOUDEN: Right. [LR113]

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LARRY RUTH: That would be the trade association of businesses in the greater Omaha... [LR113]

SENATOR LOUDEN: The guys that have the bucks and pays the bills. The other guys are the ones that get the bucks and spend the bills. [LR113]

LARRY RUTH: (Laugh) Well, that's your characterization, Senator. [LR113]

SENATOR LOUDEN: Okay. And then we have, you know, Lincoln Chamber of Commerce here is also listed here. And you had people for the city of Lincoln. Of course, the public schools, Lincoln Public Schools and Millard Public Schools are listed on here, and of course the Nebraska Chamber of Commerce. And I understand those. Who's the Papio...Papio Valley Preservation Association? I'm from out west, we don't have Papio or Papio's, (laughter) we have squall mounds and stuff like that, but we don't have...who are they, Valley Preservation association? [LR113]

LARRY RUTH: I don't know. I believe that that...and these don't all have the same interest, necessarily, except for opposing this bill. That one is, I believe, former Senator Curt Bromm's organization. And that might be involved with the NRD issue. I'm not sure. [LR113]

SENATOR LOUDEN: Okay. Then my last question on this would be, then can we go down this list and believe everybody on here was against LB534? [LR113]

LARRY RUTH: Yes, you can, as a matter of fact. At the time of the hearing, and the date that you have, 2-12-07, at 9:30 a.m., I had...I keep track of this list, and that morning I ran a new list, and I had very carefully kept notes of people who said they would agree to have their name on the list of principles opposing... [LR113]

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SENATOR LOUDEN: Okay. And it hasn't changed since February 12? [LR113]

LARRY RUTH: I went out and asked them, about two weeks ago, do you care if I put this out? And it is what it is, Senator. It was a list. And all I can say is it was a list, as of February, of people who were opposed to LB534. I want to make that clear. [LR113]

SENATOR LOUDEN: Okay. I just wanted to make it...I hate to have stuff handed to us that might not be exactly like it looks like it is. [LR113]

LARRY RUTH: Absolutely, and I agree, and I don't want to do that. That's why I want to make it clear. [LR113]

SENATOR LOUDEN: Okay. And the other comment is, we've been talking about rain and storm water all the time. Maybe it would be better if some of these cities and stuff joined Senator Chambers' lawsuit against God (laughter) and had it stop raining part of the time or something like that. With that, any other questions for Larry? Thank you, Larry,... [LR113]

LARRY RUTH: Thank you. [LR113]

SENATOR LOUDEN: ...for testifying. [LR113]

KORBY GILBERTSON: Good morning, Chairman Louden, at least it's still morning. Chairman Louden, members of the committee, for the record, my name is Korby Gilbertson. It's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today as a registered lobbyist on behalf of the Nebraska Realtors Association, the Nebraska State Home Builders Association, Nebraska Healthcare Association, Lincoln Public Schools, and Girls and Boys Town. Because this is a hearing on LR113, I'm not going to we're opposed or in support of any particular proposal. However, all those groups were opposed to LB534. And I think, basically, there was a comment specifically made about

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Girls and Boys Town and them supporting what the Papio NRD is trying to do. The reason for the opposition to LB534 has been what we have considered a rather open-ended authority to the cities to create this fee system. And the question goes down to...and I think the representative from Ralston brought up that the emphasis is on fairness. Well, we agree with that. And we don't think that the fee, as proposed by LB534, is a fair way to do it. I know that last year there were a number of slides that were shown during the presentation by the proponents on LB534. And one of them, I believe, is the pie chart that has been circulated to you again. I didn't see it, so I'm making an assumption here. But that shows that the contributors to the storm water problem are the private or residential property owners, commercial property owners, and the public or government buildings. The problem lies in the fact that when you look at what they would call a fair fee based on a storm water utility, I think, Ms. Fleck-Tooze said that it would be around \$30 for a storm water fee for a residential property as opposed to \$50 if assessed under current property tax methods, that that would be a much more fair way to do it. However, when generating that \$30 fee estimate, they include the public or government property in those who pay it. So once you get rid of that 20 percent, I think is what was said earlier today, that has to be absorbed by those other payers. So, naturally, that storm water fee would be increased. Then when you would reflect any commercial or private residential owner that would do best practices to reduce their participation in the storm water fee, the other payers would have to then expect another increase to pay for those fees. So it's a very...at this point we don't know if it would actually be cheaper to do it this way, or to do it through the current method of property taxes. Another comment that's been made year after year is whether or not the cities are using the current authority for the additional property tax levied that is provided for in statute. Secondly, I think that to say that there is no way to pay for this right now is simply not the case, especially in Lincoln where they've had resounding success in passing storm water bonding authority through the last election, I think it was either a \$10 million or \$12 million bond here in Lincoln, and it passed by over 60 percent. So, obviously, the voters feel that that is a fair way to pay for these storm water projects that are ongoing. And in light of the fact that you have two more hearings, I'll

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stop and take any questions. [LR113]

SENATOR LOUDEN: Questions for Korby? Senator Fischer. [LR113]

SENATOR FISCHER: I'll keep it short. Thank you, Chairman Louden. Korby, you just said that Lincoln has passed storm water bonding? [LR113]

KORBY GILBERTSON: I believe they've passed three. [LR113]

SENATOR FISCHER: What is that dealing with? [LR113]

KORBY GILBERTSON: I believe they've passed three now. And... [LR113]

SENATOR FISHER: To do what? [LR113]

KORBY GILBERTSON: Have been specifically for storm water projects in Lincoln. [LR113]

SENATOR FISCHER: New projects? [LR113]

KORBY GILBERTSON: You'd have to ask the city people specifically on that. But in...on the ballots it's been for storm water projects. And I think I provided the committee, in previous hearings on these bills... [LR113]

SENATOR FISCHER: It's the file. [LR113]

KORBY GILBERTSON: ...copies of, yeah, copies of the news accounts of these votes. And they've all passed, my recollection is, over 60 percent in support. [LR113]

SENATOR FISCHER: Okay, thank you. [LR113]

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KORBY GILBERTSON: You're welcome. [LR113]

SENATOR LOUDEN: Other questions? Seeing none, thank you for testifying. [LR113]

KORBY GILBERTSON: Thank you. [LR113]

JIM CUNNINGHAM: Senator Louden, and members of the committee, good morning. My name is Jim Cunningham, spelled C-u-n-n-i-n-g-h-a-m. I'm the executive director for the Nebraska Catholic Conference, which is an association of the Archdiocese of Omaha and the Dioceses of Lincoln and Grand Island, primarily involved in representing their mutual interests and concerns in the realm of public policy. I want to just confirm that the Nebraska Catholic Conference, as well as other nonprofit organizations, in particular Mr. O'Neill, from the Private College's Association, authorized me to mention his name and association in conjunction with these remarks that I'm giving to you. I just want to affirm that the conference remains opposed to any legislation that would shift the storm water infrastructure operation and management from a tax-funded general purpose obligation to a fee-based utility. We opposed LB32 during the Ninety-Eighth Legislature, LB102 during the Ninety-Ninth Legislature, and also LB534 in 2007. I want to make a comment, though, that certainly over that period of time the attention that has been given to this issue, no doubt, has raised awareness of the importance of good stewardship of water, and that is a value in and of itself without question. It's a value that is grounded in social principles, and I think in Christian principles as well, good stewardship of resources. And our opposition to the proposal, the proposed legislation in no way is intended to somehow suggest that we are opposed to good stewardship of the environment or to those types of efforts that can be made to safeguard the environment. Our opposition is from the point of view that this would erode the validity and value of tax exemption for nongovernmental, nonprofit institutions and organizations that carry out special functions and fulfill important public purposes, producing significant public benefits and generating considerable tax savings as well.

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As a matter of public policy, the idea of shifting what has been for a long time a tax-funded obligation away from property taxes and to a fee-based system would subject property that currently qualifies for religious, educational, charitable, and cemetery-based tax exemption, the historic, traditional exemptions, and in this regard it would damage a public trust that has existed for well over 100 years in the state of Nebraska. In our view, the expanded authority is the exercising of taxing authority, irrespective of the way the authority to impose the so called utility fees as described. It is taxing authority because notwithstanding the fact that authority already exists to raise revenue for these purposes, it is intended to raise governmental revenue to pay for infrastructure improvements and management programs that encompass the general public purpose and broad-based benefit of storm water management and pollution abatement, clean water being a benefit shared by the public at large. Moreover, what this proposal...proposed legislation that we have witnessed purports to establish as a utility is not really a matter of contract for services provided. It is a fiction. Because true, accurate, consistent metering or measurement, in terms of unit rate of actual generation or consumptive use is a practical impossibility, especially given all of the variations arising from the source of storm water. The pretend consumer is unable to exercise any control over where it rains, when it rains, or how much it rains. This is not like a utility bill or an electric bill. And I would like to close by offering three reasons why we think that this is not a utility, that it is just a tax by another name, and that it should not erode the value of tax exemptions that have historically been provided in Nebraska. First of all, the operation and maintenance needs of abating storm water runoff have been around a long time, and it hasn't been a utility previous. Now, all of a sudden we are to believe that it is a utility. Secondly, I think the reason why it hasn't been regarded as a utility, historically, is for the very reason that it doesn't fit that normal utility that is measured, metered, and then charged for use. And thirdly, if it is a utility, then there wouldn't be any exemptions for governmental properties because governmental properties now, governmental units, governmental organizations, are subject to utility charges. It makes no sense to me that St. Mary's School, on the north side of the Capitol, providing the same public benefit of education for children, satisfying the state's compulsory

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education needs, doing so in a way that follows the standards set by the state of Nebraska, that that school would be subject to pay this fee, but the school on the south side of the Capitol would not be subject to pay this fee, if in fact it is for use as a utility fee. So we are opposed to the idea of extending this tax by another name. Thank you. [LR113]

SENATOR LOUDEN: Questions for Mr. Cunningham? Senator Hudkins. [LR113]

SENATOR HUDKINS: Thank you, Mr. Cunningham, for being here. You lost me right at the very end. Would you care to reexplain how St. Mary's would be paying the fee but McPhee would not? [LR113]

JIM CUNNINGHAM: St. Mary's would pay the fee based on its impervious surface, McPhee would not because McPhee is a governmental...is a unit of government that is exempt from the fee, from the utility fee. St. Mary's would not be exempt under this bill. In fact, the real thrust of this bill, when you get down to it, is to extend the property tax to another segment of payers, that is voluntary associations of people who come together for purposes of religion, education, charity. That really is, I think, the bottom line thrust of the legislation is to identify a new group of payers... [LR113]

SENATOR HUDKINS: Thank you. [LR113]

JIM CUNNINGHAM: ...or to increase the amount that they have to pay otherwise because they are citizen taxpayers to begin with. [LR113]

SENATOR HUDKINS: Thank you. [LR113]

JIM CUNNINGHAM: Thank you. [LR113]

SENATOR LOUDEN: Senator Carlson. [LR113]

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SENATOR CARLSON: Senator Louden. Jim, most of what you've said here I agree with. What I struggle with is that whether it's a private institution, or whether it's government, or whether it's residential, or whether it's commercial we do have a problem to deal with in storm water runoff. Now, I'll use my church as an example. Over the years, we have paved a bigger area because, thankfully, we've been a growing church. Without paying any attention to what the effect of that paving was, we have a smaller percentage of grass now than what we used to have. So we're contributing to a runoff problem. And if there isn't an incentive there for whether it's schools or whether it's governmental or whether it's church related, charity related, 501(c)(3) or whatever, to be good stewards how do we deal with that? New...and it sounds like, from what we've heard testimony this morning, if you're going to have a pervious parking lot it may be at least 50 percent higher in cost. So the church is going to add something and pay more. Well, we don't want to pay that extra. If we aren't forced to be good stewards, how are we good stewards? [LR113]

JIM CUNNINGHAM: Well, maybe you're encouraged to be good stewards by greater public education, as was mentioned by the cities, on what the problems are so that it results in a desire to address the problem, a desire to be good stewards, a desire to relate it really to the teachings of a lot of mainline religions and other religions that teach that the environment is a gift from God and deserves stewardship on the part of all of us. So maybe you do it through that type of public education, that type of awareness. I'm not sure that you do it by imposing greater financial burdens on the people than they're already incurring by creating a shifting what is now a tax away from that system that acknowledges the public benefit and the public good that's contributed by that church, that association of individuals that come together. So I don't think you do it in that fashion. I think it's the responsibility of all of us, through our communities and our churches, to address those needs in a voluntary fashion, in a fashion that's based on a realization that we're doing the right thing. [LR113]

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SENATOR CARLSON: Thank you. [LR113]

SENATOR LOUDEN: Seeing no other questions, thank you for testifying, Mr. Cunningham. [LR113]

JIM CUNNINGHAM: Thank you, Senator. [LR113]

SENATOR LOUDEN: Let's see, is this the last testifier? [LR113]

KEN WINSTON: I think I'm going to get the award for the shortest testimony. [LR113]

SENATOR LOUDEN: Okay. Now, you could have probably sent your testimony in with a postcard, Ken, because we probably know what it's going to be, so... [LR113]

KEN WINSTON: And that's just as well, but I need to... [LR113]

SENATOR LOUDEN: But go ahead, we want to hear it. [LR113]

KENNETH WINSTON: Kenneth Winston on behalf of the Nebraska Chapter of the Sierra Club. My last name is spelled W-i-n-s-t-o-n. The Nebraska Chapter of the Sierra Club has consistently taken the position--those who create problems, and specifically those who profit from them, should pay for them in proportion to the harm they cause. Thank you. [LR113]

SENATOR LOUDEN: Questions for Ken? Well, I probably agree with you, Ken. The question is, is how do we do it, I guess. (Laugh) [LR113]

KEN WINSTON: Well, I think you've heard for three hours how to...various ways to respond to it. I'd be glad to spend some time discussing that with you, but I think you've heard a lot from a lot of different people. I mean, we've supported this storm water utility

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fee. We believe that based upon the amount of discharge that's created, that fee should be proportionate to that and certain exemptions are appropriate based upon other benefits to the community. But basically...I mean, taxpaying entities shouldn't have to pay twice. I believe that's always...that has consistently been part of the proposal, at least for the last couple of proposals. So we think a storm water utility is more fair as opposed to saying that...I mean, why should we put more of a burden on the person who owns their own home and the person who has a shopping center who creates a lot more runoff than the person who has their home. Why should the burden be lower on the shopping center than it is on the homeowner? So...and we can...I mean, I can go on at length about that if you'd like. [LR113]

SENATOR LOUDEN: That's fine, Ken. (Laughter) We appreciate your testimony. Thank you. [LR113]

KEN WINSTON: Thank you. [LR113]

SENATOR LOUDEN: Senator Schimek, do you wish to close? [LR113]

SENATOR SCHIMEK: Yes, and I'm a little reluctant to, just because you've had such a long morning. But for the record, my name is DiAnna Schimek and I want to thank you for all the really good questions and all the attentiveness. I think this is a very big problem and I think that good people can disagree on how to do it. However, I think the cities have come to you with this proposal because indeed I think some of them will use this particular method of trying to address the problem. And they wouldn't be doing this if they didn't think it would be a better and fairer method than property taxes. So there's some good arguments that have been made today. I started keeping a list of the issues and I finally gave up. I thought, I can't address all of those, and I think that I'm going to ask the people who testified here today to write responses to some of the questions that may have resonated with them. But I guess I would like to say I am sorry I wasn't at that hearing yesterday, because I'm at the disadvantage, too. But I don't think that we're

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talking about the same thing exactly here. As I understand it, the question yesterday was really more about perhaps a holding area, that kind of thing, and this is more about the city's administration and implementation of this plan. Three things I'd like to reiterate and that, one, this problem is real and it is going to get more expensive this time, goes along particularly if we can't do anything about it now. Again, the legislation is permissive, not mandatory. If we need to write some more controls into it we can. But I think part of the problem with doing that is you have such variances in cities and what they really need. And the third message is, I would be happy to work with the committee and with people involved to try to resolve any of these problems or concerns. I'm not sure they can all be resolved. For instance, Mr. Cunningham's testimony regarding the churches and the nonprofits, although I am sympathetic to that, I'm thinking, well, if that is the rationale that we use, then why are we charging them for water and why are we charging them for electricity? Why aren't they exempt from those kinds of things? A couple of particular issues I will try to address, and that is the elected board versus the appointed board versus no board at all. And here in Lincoln, we do have an appointed board for our electrical utilities. We have no board for our water utilities. But both utilities, of course, are under the purview of the city council. So any time that LES, the Lincoln Electric System, wants a rate increase, they have to go before the city council. I mean, you build in safeguards like that. Not every city might want to do it that way. They might want to...and obviously we don't even do it the same way with both of those utilities. As far as a cap on fees, I don't believe that there are any in Lincoln on either electrical or water, just because they do have to go before the city council and that's their cap. I guess that's all I'd say at this point. This is the structure or the skeleton of the plan, I guess. And to some degrees the cities would have to flush it out. But you may want to put in a few more details. That's purely up to this committee. But again, thank you so much for your time and for your good questions and for your consideration. And I would be willing to work hard on this with you if necessary because I do think it's something that needs to be addressed this year. Thank you very much. [LR113]

SENATOR LOUDEN: Okay. Thank you, Senator Schimek. And with that, we'll close the

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LR113 hearing and we will adjourn until 1:00 and start on LR89 and LR77. [LR113]

BREAK []

SENATOR LOUDEN: Okay. As we continue from before lunch, we will take up now LR89 and LR77. And Jody Gittins will read the introduction for LR89 that was Senator Pahls's resolution. Go ahead. [LR89 LR77]

JODY GITTINS: (Exhibit 10) Good afternoon, Senator Louden, members of the Natural Resources Committee. My name is Jody Gittins, J-o-d-y G-i-t-t-i-n-s, committee counsel for the Natural Resources Committee and reading the purpose of LR89 on behalf of Senator Pahls, who could not be here today. The purpose is to study how discarded televisions and their components could be recycled rather than discarded in landfills. With the advent of high-definition televisions, flat screen, flat panel display televisions, laser televisions, liquid crystal display televisions, plasma display televisions, and any other types of television sets in production or soon to be developed or released, thousands of televisions that were developed and sold prior to the advent of the new televisions will be discarded in the next few years. The Natural Resources Committee shall determine if the state or local governments could facilitate recycling of older televisions. The committee may also study how the newer television sets and their components could be recycled when they are discarded or become obsolete. I will share with the committee that this last week, last Tuesday I attended a one-day seminar conference in Chicago where the discussion was e-waste and it was brought out at that discussion that the date of 2009 for the replacement of our typical analog televisions is being moved back to 2012. So the urgency as far as the television sets themselves being discarded immediately upon the advent of 2009 has been removed, with the idea that this will give the states additional time to try to figure out how they want to handle their e-waste. [LR89 LR77]

SENATOR LOUDEN: Okay. Thank you, Jody. We'll take LR77 along with LR89. We'll

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hear both of them together, so testimony can be on both of them. At this time, Kate Allen from Senator Preister's office will introduce Senator Preister's LR77 resolution.
[LR89 LR77]

KATE ALLEN: Hi, my name is Kate Allen, that's K-a-t-e A-l-l-e-n, and I am here representing Senator Don Preister, District 5 in Omaha. Please forgive me if I can't see you really well. I forgot and wore my reading glasses, so I have limited vision here. Natural Resources Committee members, thank you for the opportunity to provide testimony on LR77, which Senator Preister introduced to address this important issue. At present, the cost and responsibility for managing discarded computers and electronics falls on taxpayers and local governments. Most manufacturers in the U.S. do not take responsibility for management of these products and the end of their useful life. Despite a number of bills introduced in Congress, the federal government has failed to enact legislation for management of e-waste. To date, nine states have enacted legislation to establish programs for recycling. In the United States, approximately 400 million units are scrapped each year of computer electronics, according to recycling industry experts. Discarded computers, monitors, televisions, and other consumer electronics, referred to as e-waste, are the fastest growing segment of our waste stream, even though according to the EPA the overall municipal waste stream volume is declining. The EPA estimated that in 2005, the U.S. generated 2.63 million tons of e-waste, but only 12.5 of that was collected for recycling. The other 87.5 went to landfills and incinerators or were kept at home. These numbers don't include the millions of those stockpiled computers, monitors, and TVs which are stored in basements, garages, offices, closets, and homes, waiting for a viable recycling option. Hewlett-Packard estimates that at least 68 percent of consumers stockpile their used or unwanted computers alone in their homes. There are two general legislative policy approaches to address the problem of e-waste recycling. One is referred to as the Advance Recycling Fee, known as ARF. Under this model consumers pay an up-front fee to the retailer at the time of purchase and the retailer forwards the fee to the state. The state then has the responsibility of establishing a program and overseeing a system

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for the collection, transportation, and recycling of e-waste. Under this approach, consumers and government and retailers bear all the responsibility. The manufacturers are off the hook completely for any responsibility or cost. California is the only state which has adopted legislation using the ARF model. The ARF model, we understand, in California has been very expensive to manage. The state has spent 16 percent of their fees on their cost to administer the program. The second policy approach is known as producer takeback or producer responsibility. It requires the manufacturer to take responsibility for the safe management of their products rather than placing the responsibility on consumers, retailers, and governmental entities. Manufacturers can choose to either join with other manufacturers to establish a program or establish their own program. These manufactured programs are required to fund and establish a system for the collection, the transportation, and the recycling of waste. Eight of the nine states which have adopted legislation have adopted versions of the producer responsibility model. There are advantages to this policy approach. When manufacturers take responsibility for recycling their own products, they are motivated to keep waste costs down, there are fewer consumer materials in the production process so there's less to recycle, and they design the product to last longer and be more useful. Since 2001, five bills have been introduced to address the e-waste problem, and there have been seven interim studies conducted. During this six-year process, interested parties have been identified and assembled to discuss and address each interest's concerns and perspective. These interests include: retailers; municipalities; landowners; nonprofit organizations, such as Goodwill, which receives a number of discarded computers and televisions; electronic repair businesses who are also left with many computers and televisions that consumers don't want to pay for to repair or they find them abandoned at their door when they get to work; WasteCap, which provides e-waste disposal opportunities for businesses; and the Nebraska State Recycling Association. There is general consensus among these interests that the producer takeback model is the best option to accomplish recycling. Since a hearing of my bill this session, we've been in touch with Thor Schrock, who you may remember testified at the hearing, and he raised legitimate concerns at that hearing. It has never been

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Senator Preister's intent to create an waste recycling program that results in the closure of small businesses. In fact, his goal has been just the opposite: to support existing Nebraska recycling and manufacturer businesses. They serve an important role and contribute to our communities and our tax base. We are working with Thor to address his concerns about all manufacturers having to pay the same fee regardless of their volume of sales. And I think it does make sense to set up a staggered fee system based on sales volume so small businesses are treated fairly and are not burdened with costs which can threaten their financial viability. We will continue to work with them as we recraft this legislation. I know several of you support the use of existing grant programs to fund e-waste recycling. I think these grant programs have served a useful purpose in temporarily addressing the recycling program. However, this is a short-term solution and one that cannot be sustained without depriving funding for other useful and necessary efforts to preserve and protect Nebraska's rivers, lakes, habitat for instance. The amount of available funding is limited. The full amount of revenue in these grant funds is not always available for grants. During years when we've been faced with budget deficits, money has been taken from the Environmental Trust grants program, for instance, to help fund other state programs. And several years ago you may remember a constitutional amendment was adopted to designate a portion of the lottery proceeds, which fund the Environmental Trust, and those proceeds were to provide funding for the State Fair. This has resulted in the trust receiving a smaller percentage of available lottery proceeds. A systematic statewide solution needs to be put in place to make convenient e-waste recycling available to all Nebraska citizens. In addition, legitimate e-waste recycling businesses need to be identified and standards established for e-waste recyclers to provide assurance that e-waste is being properly managed. I encourage the committee to move forward in implementing legislation to establish a producer responsibility statewide program. Do you have any questions? [LR89 LR77]

SENATOR LOUDEN: Okay. Questions for Kate? Senator Hudkins. [LR89 LR77]

SENATOR HUDKINS: Kate, thank you for taking Senator Preister's place. A few years

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ago there was a computer recycler here in Lincoln that would take your computers at no cost. Is there anything like that around anymore? [LR89 LR77]

KATE ALLEN: I know there's several computer recyclers. And I believe that at this point they all charge something. I think Steve Andrews with the State Recycling Association probably has a better handle on that. And he's here to testify. [LR89 LR77]

SENATOR HUDKINS: And if I heard you correctly, you want the manufacturer, the producer to be the one responsible for paying the fee. Why not the consumer? [LR89 LR77]

KATE ALLEN: Well, it will of course be passed on to the consumer. So it, you know, that is clear. Who takes responsibility to establish the program, the infrastructure, be responsible for setting up the collection sites, transportation and that sort of thing? As we all know, ultimately it will be passed on to the consumer. But it's the question of who takes that responsibility. [LR89 LR77]

SENATOR HUDKINS: Thank you. [LR89 LR77]

SENATOR LOUDEN: Other questions? [LR89 LR77]

KATE ALLEN: (Exhibit 11) I might also add that I read the transcript from the Chadron hearing and there were a number of questions that were asked at that hearing. And one of the things that I've done is I took all those questions out from that hearing and made a list and have submitted it for other people who will be here to address you. So hopefully they can address some of those questions that were raised before because there were a lot of really good questions. They were asking for clarity in terms of understanding the current system, current process, and then what happens with these waste when they are actually recycled. The other thing I wanted to do, Jeremy McNeal who is with CP Recovery, who is a recycler in Omaha, is unable to be here today. He

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actually has a collection set up right now. So I would like to enter his written testimony into the record. And that's J-e-r-e-m-y M-c-N-e-a-l with CP Recovery. [LR89 LR77]

SENATOR LOUDEN: (Exhibit 12) Okay. Any other questions? Thank you, Kate. And I might add at this time that, yes, we had a hearing in Chadron, Nebraska, what, August 22 or 23, whatever day it was, on LR77 and it was well-attended. We had input from out there in Chadron. Okay. And here's a letter that needs...from Helen Deffenbacher, be entered into the record. How many testifiers are we going to have today on both of them? Hold your hands up while I count them. Okay, I guess we're ready to go then. Next testifier then, please, on either LR77 or LR89. [LR89 LR77]

CARRIE HAKENKAMP: (Exhibit 13) Senator Louden, members of the Natural Resources Committee, my name is Carrie Hakenkamp, it's C-a-r-r-i-e H-a-k-e-n-k-a-m-p. I'm the executive director for WasteCap Nebraska that was mentioned by Kate earlier. Thank you for the opportunity to talk with you today. I'm actually one of the folks who had reviewed a lot of the questions from the last hearing that you had. In reading that testimony, it seemed that there were...that there was a little bit of confusion. So first I'd like to just mention some of our experiences to let you know that we are experienced in doing this. WasteCap has been working with e-scrap issues since 1999 under my direction. We have hosted eight workshops related to e-scrap management and how businesses should manage their waste to minimize their liability and to maximize their environmental protection in managing that equipment. We have hosted 16 collection events, 5 of them in concert with the Nebraska State Recycling Association and Keep America Beautiful affiliates throughout the state. Those 16 collection events covered 10 different communities, 282,000 pounds of computer equipment collected, 1,308 cars served, of which were both households and businesses. And then we have also written a computer collection planning guide in 2001 based on our first experiences in doing computer collections. We have also written an environmental service providers guidebook which is updated annually. In that, we have identified over 20 different reuse, refurbishing, or recycling agencies that serve

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Nebraska. We know that there's probably more but we just haven't identified those yet, or they pop up almost daily it seems. I've just spoken with, I think, three more businesses this year that want to get their computer recycling businesses started. We do web site listings of those folks. At every one of our computer collections we hand out information regarding those services and what's available for folks in the future so that they don't need to come to a computer collection. We also have a toll-free number, it's 888-EWASTE9, for anyone in the state to call for information on where to take their electronics equipment. And I just struck a deal this week where I'm going to have billboards with that phone number and our web site placed in Lincoln, Omaha, Grand Island, Hastings, and Kearney, and those are the five communities where we have definite markets for those materials that we've worked with those markets. We've done a lot of market development efforts over the years. We do contracts for our businesses to get reduced recycling fees with the recyclers. We also set minimum performance standards for those recyclers before they're working with our member businesses. Our members are saving on average about \$100,000 a year utilizing those contracts for all of their universal waste management. We have, as I mentioned, worked with a private company to set up collection depots in Grand Island, Hastings, and Kearney. We have also done a lot of educational outreach, as I mentioned. We've done workshops and we do education in every one of our computer collections. And then we've also worked with several of the folks here today and other nonprofit organizations and recyclers throughout the state to do some e-scrap planning committees, looking at doing surveys of e-scrap recyclers, etcetera. So in response to some of the questions that I heard posed in the last hearing, I'd like to talk about some of the various recycling processes and management processes that the electronics will go through as well as the cost of handling the equipment. And since it is managed under several different ways, there's a few terms that one of our e-scrap planning committees developed as part of a survey that we use to define how that stuff is managed. So the first is reuse. And what we defined as reuse is that it's only a change of hands, that there are no hardware upgrades such as memory or hard drives or any kind of physical changes made to that computer equipment. There may be some sort of software upgrade such as what

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AT4ALL does, where they install software that allows those with disabilities to be able to utilize that computer equipment. But this is what you do when you sell or give that piece of equipment to an employee or to a nonprofit. Refurbishing includes some form of physical upgrade to a computer system. It's hands-on work with an item. There's hardware exchanges. This includes folks such as Computers for Africa where they rebuild systems and send those to folks in Africa for use. Lincoln Action Program has a program where they rebuild computer systems and folks who go through their 30-hour computer training course will receive a computer at the end of that training course. Goodwill has a program that they started in Iowa and will eventually start here in Nebraska where they are rebuilding systems for resale in their stores. The Superior Pawnee Computer Society also has a system where they're rebuilding computer equipment and sending those to Africa. And Electronic Recyclers does a similar process out of Omaha. Now when we looking at recycling, we're looking at the definite end of life of a piece of equipment. It's a 20-year-old piece of equipment, it's a Pentium I, no one can reuse it, anyone who is taking donations right now is not taking anything less than a Pentium 4. So we're looking at the need to recycle a lot of equipment because our software today cannot be supported by anything less than a Pentium 4 with a great deal of memory. So the recycling is the actual demanufacturing down to component parts. It is selling off the plastics, the metals, the memory, the hard drives, the disk drives, the monitor glass. Or it's shredding those hard drives to keep the private information private. Companies such as CP Recovery in Omaha, TechWare Recycling in Lincoln, Electronic Disposal Technologies, and i-recycle in Omaha are all doing those activities. So that just gives you an idea of the different types of activities that can happen with electronics within our state. What this bill would address mainly is recycling. The final end of life, what do we do with the stuff that people have had in their closets for 30 years, and how do we manage that material. I've done computer collections where that computer equipment had been sitting outside for at least a year. You know, there is no use for that equipment in a reuse option. So the cost of handling equipment definitely varies depending on which handling process is used and how far the equipment is transported to get to its market. Obviously reuse and refurbishment options will always be your

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cheaper alternatives because there's less handling of the equipment to do that. The recycling process is much more labor intensive but it can also bring in a little bit of revenue on the sale of commodities. Generally this can help to offset some of the costs and allow for a slight revenue to the recycler. But unfortunately we are not yet at a point where the markets are going to support all of the labor that's required to get those materials down to their component parts. The other factor that does affect costs, particularly with the monitors, is whether or not that equipment is working or can be salvaged for reuse. If a monitor screen is screen burned or scratched or if it's yellowed around the edges, the plastics have yellowed, it is not available for reuse. That means that it must be demanufactured and either the glass will go for glass-to-glass recycling, which is becoming a lot less commonplace now that most of the monitors are no longer a CRT glass monitor, they're flat screens and plasma screens and that type of thing. Otherwise the glass is then sent to a smelter for use as flux in the smelting process. And the cost at the smelter the last I've heard was running about ten cents a pound. So when we're charging 30 cents a pound to collect and process and manage it, 10 cents of that goes directly to the smelter for the glass. Additionally, issues pertaining to the different management processes occur in a lack of environmental regulations and industry standards for recycling e-scrap. Currently, the only certification in the nation regarding electronics processing is the International Association of Electronic Recyclers, the IAER. They have a third party audited certification that they offer only to their members. Although recyclers can use this to sell their company over another as a perk of what they do, their process is very costly. It requires membership in the association and it requires the cost of that third party audit. Most state agencies and the federal government don't require that this certification be there. The only environmental regulations right now for e-scrap management exists under the Resource Conservation and Recovery ACT, RCRA, with the U.S. EPA restricting landfill disposal of hazardous materials generated by businesses, but households are currently exempt from that. Recent rulings in Nebraska and at the federal level creating the CRT rule have exempted most electronic equipment, namely cathode ray tubes from monitors and televisions, from these regulations only if the equipment is to be recycled. So an

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additional issue that was raised in your last hearing included that of legislation in other states. And I was recently on a national panel at a national conference with Jerry Powell, who's the editor of E-Scrap News and probably the most knowledgeable man in the U.S. on electronics recycling. He outlined legislation in other states over the last two years. In 2007, there were 73 measures introduced in the nation and 13 were enacted. And additional two measures were passed last week in California. Of the measures that were introduced, 55 percent were producer responsibility and 1 percent was the Advance Recycling Fee. Eight produce responsibility measures were passed in five states in 2007 and the two additional that were passed in California, so there are ten total bills. In May of this year, the Electronics Industries Alliance also drafted model legislation for national management of electronic scrap. This was prior to Senator Preister's bill being introduced...or, I'm sorry, it was following Senator Preister's bill being introduced. But Congress has also said that they will not consider any legislation until the manufacturing and retail industries agree to an electronics recycling financing structure. And this model that the EIA has introduced can serve as a framework for national e-waste legislation. Their approach includes a two-pronged approach which would be funded through an Advance Recycling Fee for televisions and a producer responsibility for monitors and other electronics. That just points out the complexity in handling the televisions versus computer monitors. There's different materials in the televisions, the televisions tend to be much larger, and cost a lot more to manage. Mr. Powell in that meeting estimated though that it would take 30 to 40 percent of states in the United States to pass some sort of legislation before federal legislation will be enacted. So I've included some of his slides from his presentation. The one on the top right is the bills that were introduced throughout the country. The next two outline the last two years of bills and what types of bills those were that were introduced. And then there's a comparison in 2006 and 2007 of the types of bills that were introduced in the bottom. And then there's also a status of the 2000 (sic) measures, which bills were passed and in what categories those were in. Most of the legislation that had passed includes televisions as well as covered electronic devices. The producer responsibility bills all do require that original equipment manufacturers register with an initial

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registration fee plus annual fees and some variable recycling fees. Most of the legislation includes provisions for orphaned equipment for that equipment that the company who made it is now out of business, and most also allow for the original equipment manufacturer to either use a state program or to design their own takeback programs as part of that legislation. Some of the legislation also includes educational programs. Two final things that I wanted to talk about. One is why not to use the grants and one-day collection events as the answer to managing e-scrap in Nebraska. First, based on all of the collection events that we have done and some of the research that we've done throughout the nation, less than 1 percent of the population participates. It's .003 percent that participates per capita in collection events. Those events only collect anywhere from .4 to 1.4 pounds per capita. The 1.4 pounds is only at free collection events where there's no charge. Our total cost per pound...and I should state, too, that when we do a computer collection with WasteCap we allow one system for free, which is 50 pounds of peripheral equipment and one monitor. We've determined that's about what a household will bring so it allows the household to bring their first system for free. Businesses then are responsible, and households, anyone bringing more than that are responsible for the cost of the recycling of that equipment. But our total cost per pound, including all of our planning and personnel time and what we've charged off to the grant and what we've charged off to participants, is about 51 cents a pound. Our total cost per car participating is \$133 per car. When you look at how much we're charging and what it's costing us to plan these events, based on Goodwill's estimates that Nebraskans will generate 1.57 pounds per capita per year, that equals about 16.2 million pounds annually that are generated by Nebraskans that need to be managed. At 50 cents a pound, that's going to be \$8.1 million per year. At 30 cents a pound, which is our recycling fee, minus anything that we're doing and planning, just assuming that the volume will help to bring that cost down, it's \$4.86 million per year to manage that waste. One of the issues that some of our communities have had is that they've had a grant to take in so much waste and they've taken in double that. They've had to send their recyclers home and get a storage unit to wait for the next grant. So they're spending money on storage to hold that stuff until they have enough money again to

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pay for it because they've allowed so many items to come in for free that they're taking in more than they have money for. There's also an opportunity lost for not funding other projects. There's a lot of projects that are funded through the grant funds in the state and there would be a lot of communities without balers and trailers and a lot of projects that would not be funded if we used all of the funds in there. Our DEQ funds don't even come close to having \$8.1 million in them annually, so it would wipe out any other projects that there would be, plus there would still be a need. DEQ has already spent \$1.66 million over a five-year period on projects and we haven't even barely touched the surface. So having legislation that provides a funding source and provides for developing infrastructure to collect the materials, to reduce the costs of planning these events is absolutely necessary in managing our electronic scrap in the state. The benefits to the proposed legislation that Senator Preister introduced, and in looking at some of the changes that could be made to match what the Electronics Industries Alliance has drafted, include: increased accessibility; allowing for the use of existing infrastructure, whether that's landfills or transfer stations or Goodwill stores or a local IT person to collect that material and aggregate it one spot to reduce our transportation costs, to reduce our handling costs. It also provides a funding mechanism. As I mentioned, we can't do this without some additional funding. Our grants can't support it. People aren't willing to pay. That's shown in the difference between collecting .4 pounds in an event where you have to pay to 1.4 pounds where you don't have to pay. It includes a lot of educational aspects, including some things that WasteCap has already done like our 800 number, our web site, the outreach that we've done to communities. And it's similar to a national model so that if we have this in place, if a national legislation ever does come around, we would already have the infrastructure in process and it wouldn't be as difficult for us to manage that once that's developed. And it also includes televisions. You know, it's...televisions are pretty much the same beast as a monitor, again, only much larger and they've got different materials. If you look at what the console televisions are made out of, everything is recyclable except for all the wood. They're having to throw away the wood, there's no market for that. Plastics on the computers can be thrown away. We did a collection two years ago in Norfolk and in four

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hours we filled a 48-foot flatbed full of console televisions. In four hours. So the need is there, it's just a matter of developing the infrastructure and developing a funding mechanism to manage the e-scrap. So I am in support of legislation that would use some sort of a producer responsibility model on electronics and perhaps an Advance Recycling Fee that we charge also to the consumers on televisions. And I'm available for any questions that you might have. Thank you for your time today. [LR89 LR77]

SENATOR LOUDEN: Questions for Carrie? Senator Wallman. [LR89 LR77]

SENATOR WALLMAN: Thank you, Senator Louden. Yes, Carrie, has your organization looked into like, you know, Germany as in recycling--you know, they do about everything--what their cost is? [LR89 LR77]

CARRIE HAKENKAMP: You know, I'm not sure what their cost is, but they use a producer responsibility model in Europe and it's all covered by the original equipment manufacturers, similar to what these models are. And they've been very successful in Europe in getting those programs going. [LR89 LR77]

SENATOR WALLMAN: I agree we have to do something. And how we do it... [LR89 LR77]

SENATOR LOUDEN: Senator Carlson. [LR89 LR77]

SENATOR CARLSON: Senator Louden. Would you explain to me...I see you mentioned that the total costs per car, I don't understand what that means. [LR89 LR77]

CARRIE HAKENKAMP: At our computer collections, we serviced 1,300 cars. That car may be a business, it may be a household, but that's the number of vehicles that came through our computer collections. And so when we look at the average cost per car coming through, because there's such low participation by the communities and per

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capita, that's the cost that we came up with. [LR89 LR77]

SENATOR LOUDEN: I have a question. When you have the manufacturer or the salesman or someone like that that is supposed to be responsible for that television set, what do they do with it when you bring it back to them? [LR89 LR77]

CARRIE HAKENKAMP: They...most of them have their own programs set up. I know that Dell has worked a lot with Goodwill in the nation to help collect some of the equipment, and then they find a local recycler that meets all of their standards. They have minimum performance standards for that. Some of them are generating their own recycling programs because it's cheaper for them to manage it themselves. But what has happened with the producer responsibility is that they have made their equipment last longer so that they're not having to manage it as frequently. They've made their equipment more recyclable so that the materials in them are more recyclable and that there's less hazardous materials. [LR89 LR77]

SENATOR LOUDEN: Yeah, but that will take years because we're talking about television sets that are 30 years old that are sitting around out there. How many of them just, they just drive over them with a crawler and put them in the landfill? [LR89 LR77]

CARRIE HAKENKAMP: None of them. It would be illegal, they would be fined in Nebraska. [LR89 LR77]

SENATOR LOUDEN: Yeah, but it isn't now. [LR89 LR77]

CARRIE HAKENKAMP: If you're a business and you're generating a hazardous material, which a CRT, a computer cathode ray tube or a television cathode ray tube is considered a hazardous material, if you were to do that you've automatically created a waste that's not recyclable anymore. And that would be in violation of RCRA regulation. [LR89 LR77]

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SENATOR LOUDEN: Okay. Now computers, we had the testimony in Chadron that there is a value for used computers because they can take them apart and there's stuff out of there that can be reused and recycled and there's businesses that more or less operate on that. But the television sets, nobody seems to have any use for them other than to grind them up for something. And that's reason...our question was, out there at Chadron even and it still is for me here, is what do you do with some of those things? I mean, old tires, we ground them up and put them in the highways or else you shipped them to Kansas. Are we going to take television sets in Nebraska and grind them up and ship them to Kansas, too, or where do they go? [LR89 LR77]

CARRIE HAKENKAMP: No. We would do the same process with a television set as we do with a computer monitor. We would recover the glass off of the television set, which is the cathode ray tube, and we would separate that into its component parts of metal and lead and glass. And each component part would be sent for recycling or either glass-to-glass recycling, which they would make new monitor glass out of the glass from that television set, or it would go into a smelter, where they would have to pay per pound for the amount of glass that they send to that smelter. [LR89 LR77]

SENATOR LOUDEN: Okay, that would be my next question. Who's going to pay for the cost or what should the cost be for the manufacturer to add on to take care of that or do you have any idea what that's going to cost? Is that going to cost everybody \$15 for a television set or is it going to be on the size or how would that be handled? [LR89 LR77]

CARRIE HAKENKAMP: I don't know how they're going to determine that. But like I said, just for us to plan and promote a program and get it to a recycler is costing us 50 cents a pound. So when you're looking at a 200-pound television, it gets pretty expensive. We did a collection in Hastings where a gentleman brought in his console TV. It cost him \$100 to get rid of it. [LR89 LR77]

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SENATOR LOUDEN: When you talk about, you know, the cost of that, I guess it makes me wonder what...somebody is going to have to pay for the thing. And if we have grant money or something like that, then they're more or less hauled off and done with. But if there's going to be a fee in there someplace, I don't know if that fee is passed on to the people when you bring it back or if you pay up front on the fee. It's going to make a difference. Because if it's on it when you bring it back, there will be a lot of them that won't be brought back. [LR89 LR77]

CARRIE HAKENKAMP: Correct. And that's why... [LR89 LR77]

SENATOR LOUDEN: I mean, there's refrigerators sitting around because somebody has got to pay \$20 to take them in and have the Freon taken out of them before they can put them in the... [LR89 LR77]

CARRIE HAKENKAMP: Right. And that's why the industry has only looked at either the Advance Recycling Fee or the producer stewardship model. [LR89 LR77]

SENATOR LOUDEN: Because it isn't hard for us to pass legislation, I guess, to say the manufacturer has got to take care of it. But that is just the beginning. You got to see to it that they do, you got to have legislation that requires them to. [LR89 LR77]

CARRIE HAKENKAMP: Right. And that legislation covers how they would manage... [LR89 LR77]

SENATOR LOUDEN: And this is the reason when you talk about having the manufacturer do that, I wonder what else we'll be getting into rather than just having a grant program and pay for it and haul it off someplace. [LR89 LR77]

CARRIE HAKENKAMP: Well, I believe that the way that the legislation is written is that they can either participate within the state-developed program, whether that's developed

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by the Department of Environmental Quality or a private contractor that DEQ partners with, that program would develop the collection infrastructure and the management and processing infrastructure as well. So they could either pay into that fund to do that or they would have to have a program of their own that met the standards that are set by the state. And that would have to be audited. [LR89 LR77]

SENATOR LOUDEN: Okay. Other questions for Carrie? Senator Carlson. [LR89 LR77]

SENATOR CARLSON: Senator Louden. In the whole process of your experience, have you heard of any either television manufacturers or computer manufacturers that develop biodegradable parts? [LR89 LR77]

CARRIE HAKENKAMP: I have not. I think the push right now nationally, and coming from Europe and into the United States, is that there's a RoHS standard. It's reduction of hazardous substances and materials. And the RoHS standard in Europe is required of electronics manufacturers. And so a lot of those hazardous materials are being taken out of the production as much as possible. I mean, you're always going to have a little bit of lead in your solder and that type of thing. But that's been the push right now is to reduce the hazardous substances, reduce the number of materials that go into creating that piece of equipment, so that it is more recyclable, so that the plastics are more easily taken apart and all of the materials are taken apart. But I have not heard anything about biodegradable. [LR89 LR77]

SENATOR CARLSON: Thank you. [LR89 LR77]

SENATOR LOUDEN: Other questions? Seeing none, thank you, Carrie, for your testimony. [LR89 LR77]

CARRIE HAKENKAMP: Thank you for your time today. [LR89 LR77]

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SENATOR LOUDEN: Next testifier? [LR89 LR77]

STEVE ANDREWS: (Exhibit 14) Senator Louden, committee members, thank you for allowing us to come here today and discuss this issue with you. We've been doing it since 2001. So what I'm passing out today is my response to some of the questions that were generated in Chadron, hopefully kind of clarifying some of the concern or kind of what's happening and stuff. Carrie did a fantastic job of presenting you with a lot of the facts and the figures and what's happening from a legislative standpoint. What I'm going to just concentrate on really briefly is, and I've made this... [LR89 LR77]

SENATOR LOUDEN: Would you give your name and... [LR89 LR77]

STEVE ANDREWS: Oh, I'm sorry, yeah. Steve Andrews, S-t-e-v-e A-n-d-r-e-w-s. For me, you know, daily I read research studies, journal articles on the amount of waste that is generated, you know, per capita in this country. And it's incredible. And I've made this point in past testimonies and I'm going to make it again today, because I think it's one of the most important ones. And it's the fact that this is not waste. We really do have to move these materials from a waste or a garbage standpoint and look at them as a resource, the same as we look at virgin extraction and the resources that go into manufacturing all kinds of products. So we need to look at that as a resource and recovering that resource. Virgin extraction costs money. Recycling and, you know, getting return back on these materials is going to cost money also. This morning we sat through the storm water issue, and again, economics always floats to the top. But if...it's basically coming down to, we're either going to pay today or we're going to pay tomorrow. Okay, any environmental issues, I mean you can look at the issue in Omaha with lead. And that was an industry that was not regulated, was not even reviewed. You go down to Missouri in (inaudible) the lead refinery down there. They used to just take the lead out in the back of trucks and it would blow all over the place. And look at the problems that they have today, the problems that we are dealing with in Omaha with the lead issue and the money we're spending there today. Now I guarantee you, if it was

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regulated or looked after a little bit closer at the time of manufacturing it then, we wouldn't be dealing with the same cost today. And I think that it's important that we really look at this bill and this issue and make strides today so that we don't have to pay for it tomorrow. I was asked at a meeting a few weeks ago, what was my opinion, and I was blunt honest. And my opinion is, if we would have moved on this in 2001, we would be six years ahead of where we're at today. Any system that you put in place is going to need to be changed. We're going to have to make adjustments as we go. This isn't, you know, to me a perfect answer and we're not going to put this in place and not have problems. We are going to have problems and we're going to have to solve those problems. And if you look at manufacturers, and Toyota probably being the best, they are looking at constant improvement all the time. You know, they don't sit still and do something and do something and do something. Their employees are trained to look for efficiencies and better ways of doing things. And I think if we would have done that in 2001 and made a move, we could have been way ahead of where we're at today. We talked a little bit about the TVs and moving that back to 2012, and that's great. But again, we need to move today so that when 2012 comes around we have something in place to deal with those TVs. If we wait two, three more years on this, then we're...and if we look at the six years it's taken us to get to this point, we're back in 2014, 2015. So we're not going to be prepared. I think we can be prepared for this better than what we've been today. Again, my job at the Recycling Association is to advocate for recycling, reduction, and reuse. And I think, you know, the NGOs and communities in this state over the past six years have done a great job of that. We need to continue to do that. And again, my job is to look at this and say, okay, how can I convince people that we're not talking about a waste; we're talking about a resource. So I'll leave it at that and entertain any questions that you might have. [LR89 LR77]

SENATOR LOUDEN: Questions for Steve? I...what would be the best way to do that? Are you advocating then a manufacturer-type program or point of sale or a grant program to get rid of these? I mean, I agree, something needs to be done. We can't just keep pushing it out there because they're just getting deeper and deeper in the

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basements. But having said that they're getting deeper in the basements, we can't hardly get a manufacturing program going on those that have been sitting there for 20 years. What do we need to start it? Should we start out with a grant program and perhaps in the future change it over? [LR89 LR77]

STEVE ANDREWS: You know, to me it's a hybrid. I think we've used the grants fairly efficiently in doing collections. And I think what it's done is it's given this issue some profile. We've done in cities, you know, across the state. We were involved some with WasteCap, they've done some on their own. I was just in Chadron not too long ago and Schuyler and met with them. They've done some. You know, to me it's...to me, consumers, if we're going to purchase this, we should take some responsibility for it. So we shouldn't say, you know what, I don't want to pay for it, you know. So I think we should take some responsibility for it. I think the manufacturers have to take some responsibility for this issue also, because they manufacture the products and they have the ability to make major changes or major shifts. So yeah, the manufacturers. If you would have asked me in 2001, I would have said the Advance Fee would work just fine. And I think if we would have passed that bill, we would be in great shape right now because we would have had an infrastructure set up to collect this material. I think it would have been the best. Right now I would have to say the product stewardship model is the one we want to go with because it is the one that is like what every other state is really moving towards. And I think if you see national legislation, it's going to be based on that same model and stuff, because that's where everybody has basically come. [LR89 LR77]

SENATOR LOUDEN: So that manufacturing type stuff that we...some of the information we had in Chadron, there was only one or two states that had done it. There were several that were introducing that legislation and trying to get it passed, but it hasn't been there long enough to know how well it's going to work. And so I wonder what we need. We have to do something to get started. Should we have a grant program and then whenever anyone brings something they have to pay a price per pound or

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something like that? But you're going to have to generate some funds to get it started and I'm wondering how the best way to do that. [LR89 LR77]

STEVE ANDREWS: Again, I guess my opinion is, I think, you know, passing this product stewardship legislation would be the best step we could take, infusing funding into the system to set up the infrastructure for collection. I think you can continue to use some of the grant funds, but as Carrie explained, I mean there's just not enough grant funds out there to cover all of this cost. And the other issue there is, if you take all of those grant funds and just do e-waste, you know, I work with communities and businesses statewide and they need equipment to process material or move material and stuff. So I personally believe that we need to pass legislation to get this thing moving. Now we don't know what's going to happen. We don't know if it's going to be perfect. We don't know what, you know, bumps we're going to run into. But that's fine, to me, because we can run into those bumps because I think that we have, you know, enough expertise in this state and then also nationwide to really remedy some of those problems as we kind of go, solve them as we go. [LR89 LR77]

SENATOR LOUDEN: Okay, thank you. Other questions for Steve? Seeing none, thank you for testifying. [LR89 LR77]

STEVE ANDREWS: Thank you. [LR89 LR77]

GENE HANLON: (Exhibit 15) Good afternoon, Senator Louden, members of the Natural Resources Committee. My name is Gene Hanlon, G-e-n-e H-a-n-l-o-n. I work as the recycling coordinator for solid waste operations for the city of Lincoln Public Works and Utilities. And what the page is passing out is a letter that we sent to committee members August 20 prior to your Chadron hearing. And I appreciate the opportunity to appear again today to state the city of Lincoln's position regarding e-waste recycling. First of all, we don't believe it's local government's responsibility to recycle e-waste. It shouldn't...should not be borne by local government. We believe strongly in producer

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responsibility and I think Senator Preister's bill is a good model in having that product stewardship by the manufacturers that make the profit on electronics. We also believe that, in our experience, that e-waste takes the least cost disposal option by the public. And if there is a fee for recycling that material, there will be problems with illegal dumping and things of that nature. Senator Hudkins asked earlier about local recyclers in Lincoln that collected the material for free. I know of only one firm that did do that. They had a press release in the local paper that they were accepting it free, and they got buried by the material. Then a week later they sent out a press release saying that they do have a fee and they currently have a fee of \$10 for the monitor now. There are currently three recyclers, private recyclers in town that do take electronic equipment, but there is a fee associated with that to handle CRTs. But I think having a separate fund to subsidize the recycling of that so the public can drop that material off for free is an important element of any legislation to maximize the amount of material that is diverted and allows the public to dispose of that material at no cost. We don't see, want to see the state ban e-waste from landfills. We think that should be a local decision. We'd like to see the infrastructure for recycling e-waste developed statewide before any bans might occur, and that should occur at the local level. We think there should be a clear, concise definition related to what e-waste is in any legislation. A nine-inch sized screen is something that's easier for us to monitor versus trying to find cell phones and small portable PlayStations to make sure that those don't get disposed of in the landfill. So with that, those are my comments. I'd be happy to answer any questions people might have. [LR89 LR77]

SENATOR LOUDEN: Questions for Gene? Senator Kopplin. [LR89 LR77]

SENATOR KOPPLIN: Did you say you do not believe that e-waste should be banned from local landfills? [LR89 LR77]

GENE HANLON: By the state. I think you need to have a statewide infrastructure in place to handle that material prior to banning it, just banning it, and leaving it the burden

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of what people do with it. I think an infrastructure needs to be in place through the private sector or through local government to take that material and give an opportunity for people to do something with that material, rather than just banning it. [LR89 LR77]

SENATOR KOPPLIN: Okay. [LR89 LR77]

SENATOR LOUDEN: Other questions? Senator Fischer. [LR89 LR77]

SENATOR FISCHER: Thank you, Chairman Louden. Thank you for your suggestions on this. You feel that the state shouldn't ban it, to follow up on Senator Kopplin's question, you feel the state should not ban e-waste in landfills and that private partnership with, I assume, local government then come up with a plan or the state come up with a plan, and what do you suggest that plan is, beside the state funding. [LR89 LR77]

GENE HANLON: I think through a product stewardship initiative where funds are collected from the manufacturers to establish a fund to recycle that material. And those funds can either go to a local municipality to set up a program to collect that material, or those funds could go to the private sector to collect and process that material. [LR89 LR77]

SENATOR FISCHER: And you also felt that the drop-off should be free, the public shouldn't have to pay to drop off any kind of e-waste. [LR89 LR77]

GENE HANLON: And again, that's based on our experience right now. Right now in the state of Nebraska, businesses recycle their e-waste, they're required to. We don't accept that in the landfills for disposal because of the RCRA regulations that landfills face. But in the case of the households, they are allowed to dispose of that in the landfill. And when you explain that they can dispose of that in a landfill or they can pay \$10 to have it recycled or \$15 to have it recycled, the impression I get from a lot of the

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people I talk to on the phone say, well, I'm just going to put it out at the curb and have it go to the landfill. Some people say, I want to do the right thing and I'm willing to pay that additional fee. But I think if the manufacturers, through either Advanced Recycling Fee or through the product stewardship, a producer takeback program where you collect funds to establish that, that helps to set up the infrastructure to recycle that and reduce the burden off the individual homeowner. [LR89 LR77]

SENATOR FISCHER: I'm getting conflicting views on different things here from the city of Lincoln, as I view it. Our previous hearing, you know, we're...on the storm water situation. The city of Lincoln wanted those responsible for most, the way I understood it, the city of Lincoln wanted those most responsible to have to pay a higher fee. Stores with a large roof mass, large parking lots, the paved surfaces. Now I'm hearing from you in a different department that not only should this not be a city responsibility because you support the product stewardship, but the public that uses these electronics should have no responsibility and there should be free drop-offs. How would you respond to that? [LR89 LR77]

GENE HANLON: Well, my point is that in order to maximize the amount of material that's recycled, to have a fund established by the state, it's very difficult for the city of Lincoln to establish a Advanced Recycling Fee on a product takeback program because that would place the businesses at an unfair advantage compared to other businesses surrounding Lincoln. So by having a uniform policy established by the state to collect those funds where all businesses have that same fee, it allows an equitable distribution of that fund to support that recycling in that community, and it allows the generator of the waste, because those costs, the product steward ship model, those costs are going to be passed on to the purchase of that computer. So they're paying for that service at the time they buy it. So there's, in my mind there shouldn't be a burden that they pay twice for the recycling of that material. They pay for it up front. [LR89 LR77]

SENATOR FISCHER: Okay. Thank you. [LR89 LR77]

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SENATOR LOUDEN: Senator Carlson. [LR89 LR77]

SENATOR CARLSON: Senator Louden. Gene, in listening to this and a remark Senator Louden made a couple of different times, I understand that as a private citizen if I have to pay a \$5 or \$10 fee, I'm probably not interested in taking that TV or that computer anywhere. So I'm more inclined to throw it in the garage or throw it in the basement. Now in terms of public protection or public health, is there a danger in that? [LR89 LR77]

GENE HANLON: I think there...I can't address the public health issue because I'm not knowledgeable about it. But I do know that in the TV screens, in the computer screens is lead that is hazardous if it's broken. And I would suspect that there is some risk associated with that, having that stored in the garage or the basement, that there is a potential for that to happen. But I can't address the health impact that that might have on the individual household. Is that what you're talking about? [LR89 LR77]

SENATOR CARLSON: Well, I'm thinking that over time, over time you get one piece after another and pretty soon you got a half dozen or more maybe in your basement. I understand that the recycling is very important. But if I have to pay, I'm probably not going to do it. If I can do it free, I'm probably not going to do it because it's still effort and time to take it someplace. So what kind of incentive do I need to get it done? Either pay me or penalize me. [LR89 LR77]

GENE HANLON: And I think having convenient locations that they can take that material where there is no cost, and that's where the importance of having either an advance disposal fee or a product stewardship fund that the manufacturers provide the money to help provide those services to the resident. And it's not borne by the taxpayers entirely. And there...in addition, many people put things in their basement because they think there's an economic value to it. Even though it might 20 years old,

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they spent \$2,000 for that when they bought it, and so it's got to be worth something now. And there is some value to that by recycling and taking certain scrap material from that. But I think it takes the industry stepping up to the table and supporting it and not relying on the taxpayers. [LR89 LR77]

SENATOR CARLSON: Thank you. [LR89 LR77]

SENATOR LOUDEN: I have a question, Gene. Again, what do you...are you, solid waste operations, what is it you do? [LR89 LR77]

GENE HANLON: I work as recycling coordinator for the city of Lincoln. [LR89 LR77]

SENATOR LOUDEN: Recycling coordinator? [LR89 LR77]

GENE HANLON: Yes. [LR89 LR77]

SENATOR LOUDEN: When you're talking about e-waste, are you talking about television sets also, or just computers? [LR89 LR77]

GENE HANLON: That certainly can be included in the definition of e-waste. [LR89 LR77]

SENATOR LOUDEN: Now is...the computers are easier to recycle and do something with than the TVs, right? [LR89 LR77]

GENE HANLON: We have a local recycler here in town that does take the televisions and charges a fee for those to be recycled. And he handles that material the same way he handles computer monitors. [LR89 LR77]

SENATOR LOUDEN: Does he charge the same price for everything? [LR89 LR77]

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GENE HANLON: It's a per pound fee and the per pound fee, I don't know exactly what he charges, might be 35 to 45 cents a pound. [LR89 LR77]

SENATOR LOUDEN: Now you said something about businesses can't dump their televisions in the landfill but private citizens can? [LR89 LR77]

GENE HANLON: Individual households can. And I'm not an expert on hazardous waste rules, but they have small quantity generators. And representatives from DEQ are here and could perhaps address that, I'm sure they can, what those guidelines are. But if a business generates a certain quantity more, I believe it's 43 pounds per event, they fall under hazardous waste rules and they can't dispose of it. [LR89 LR77]

SENATOR LOUDEN: Okay. [LR89 LR77]

GENE HANLON: But households are exempt from that. [LR89 LR77]

SENATOR LOUDEN: Now if you're solid waste coordinator, what's more dangerous: an old TV set or a, what do you call these lights up here, fluorescent light bulb? [LR89 LR77]

GENE HANLON: Again, I'm not a hazardous waste expert. I think both have hazards. The fluorescent bulbs have mercury in them that cause damage to your nervous system if you're exposed to them, particularly for young kids. In the case of televisions, there's lead in the screen of the television which isn't a hazard unless it's broken. Same thing with a fluorescent bulb. So proper handling and storage of that is important and disposal procedures are important. But I couldn't tell you a degree of risk or a health impact that either one would have. [LR89 LR77]

SENATOR LOUDEN: Okay. Do you, just for prognostication purposes, are we going to

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be back here next year (laugh) talking about how to dispose of fluorescent light bulbs?
[LR89 LR77]

GENE HANLON: We could, if...you know, it's interesting. I...I won't go there. [LR89
LR77]

SENATOR LOUDEN: Okay, thank you. (Laughter) Any other questions? Thank you,
Gene, for testifying. Next testifier, please. There's an on-deck chair up here if
somebody... [LR89 LR77]

KAY STEVENS: Good afternoon, committee. My name is Kay Stevens. I'm executive
director of the Association of Nebraska and Iowa Goodwills. We represent seven
separate Goodwill organizations across both states. And first of all, I wanted to just
touch base on the subject of product stewardship because there seems to be a lot of
confusion as to what it means and what the impact of that particular approach to
problem solving is. We've been working within Goodwill, both locally and nationally, with
Dell Computers, who are big computer makers that everyone has heard of. And they
are proponents of producer responsibility. As a producer, they feel that if they form
viable partnerships within states with either nonprofit entities or other entities to manage
the material efficiently and according to a standard, that they are fulfilling their
responsibility as stewards of the environment. And we support that point of view and
that is embedded in this bill. The reason that we've supported it is because Advance
Recycling Fees are notoriously unpopular, not the trend across the country, as Carrie
told you, and we think that putting a producer responsibility provision in the bill will
increase the visibility of these manufacturers locally. We want to see them coming into
the state, forming business alliances, forming partnerships, helping build infrastructure
so that we can manage this problem as an economic development strategy, which is
what it really is. All recycling is really economic development in sheep's clothing. And
what we are doing in Goodwill, and we're being very careful not to make gigantic public
announcements yet because of the observation that Gene made, which is we do not

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want to get buried alive in electronics. But across the two states, between the two of us we have 76 drop-off locations and a very well-established trucking infrastructure that links those 76 Goodwill stores or donation centers. Our plan is to phase in one organization at a time until we've got an infrastructure across both states for the collection...creating supply in a hub and spoke kind of manner. The hub in Iowa is in Des Moines and is operation and it's slowly getting on the feet. Now the kicker, and one of the reasons when I was approached about doing this that I just didn't believe it was...Goodwill has a national or international policy. They do not accept payment for their donations. So what I was told is we are going to recycle e-waste from consumers and homeowners, not businesses, and we are not going to charge. And we're going to find the revenue in the scrap. We're going to find the revenue in the rebuilding and refurbishing of usable equipment and the harvesting of reusable parts. And there's a precedent for this in several locations; Austin, Texas, being the oldest and the most solvent. And they are doing exactly that and making a lot of money doing it. And the network across the country is roughly 20 Goodwill organizations working in partnership with Dell to do just exactly this. Dell is offering each of the Goodwills they work with, they come in and they offer technical assistance, they pay for the downstream audit. So when we move material out of the area to a marketplace, we know we're sending it somewhere where they're not going to be like letting four-year-olds take them apart in a swamp someplace. They're being responsibly managed all the way to the end of the line. We will be starting in Nebraska on February 1 and moving across the state with the three Goodwill organizations in Nebraska, which is Lincoln, Grand Island, and Omaha. And our priority and Goodwill's mission for 100 years has been job training and education for those who face disadvantages in their life. And it means helping people with physical disabilities, mental disabilities, or employment disabilities, people who have been traditionally perceived as unemployable for a variety of reasons, any kind of a partnership that's going to help us facilitate that. At the same time, the electronics management system will be growing and making, I think, huge headway because of the partnerships that we're able to forge. And bringing Dell to the table is extremely helpful and they are an example of a corporate interest that has the best interest of all of us, in

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addition to themselves, at heart. And they want to see this done properly, they want the material managed in an environmentally responsible manner, and they want the Goodwill organizations to make enough money to pay people to be doing the work. If you read Jeremy's statement, he mentions what's involved in dismantling television sets and the steps, that there are things in the inner mechanics of the TV set that are recyclable. And one of the things that Goodwill is good at is labor, developing labor, teaching and training and working to teach people how to do these things, and then moving the material on. I think the producer responsibility system that comes out of this legislation should be designed to say, simply, if a company wants to sell computers in Nebraska, then they have to certify or verify in some manner to be decided that they are indeed working locally in order to get the stuff recycled and moved away from the disposal system. If they can't verify or certify that, the fees go up. If they do have a well-designed system, then the fees go down. And that's the approach that most of the manufacturers are seeing go in place. And I'd be happy to entertain any questions, should there be any. [LR89 LR77]

SENATOR LOUDEN: I guess my question is, you're telling me that Goodwill is going to get into the recycling business, partner up with the manufacturers. [LR89 LR77]

KAY STEVENS: Right. Goodwill has been in the recycling business for 100 years because we recycle several hundred thousand pounds of material a year. We're just going to expand to e-waste. We don't right now accept e-waste voluntarily but we still get e-waste after hours. In front of all of our stores there's e-waste. [LR89 LR77]

SENATOR LOUDEN: Now if there's legislation passed so that you're able to do this or whatever, and evidently if this legislation passed then it would be wide open to anybody else to do it, not just Goodwill. [LR89 LR77]

KAY STEVENS: Sure. [LR89 LR77]

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SENATOR LOUDEN: That would be correct? [LR89 LR77]

KAY STEVENS: Anybody that wants to commit the time and the resources to do this. It's a free enterprise system. [LR89 LR77]

SENATOR LOUDEN: Now my next question is, I understand how it will work here in Lincoln, Omaha, or something like that. But out in western Nebraska, I only know of one Goodwill store clear out there and that's the one in Scottsbluff. I mean, there's 2,000 square miles out there... [LR89 LR77]

KAY STEVENS: That's right. [LR89 LR77]

SENATOR LOUDEN: ...that there isn't any Goodwill store, and that's 90 to 100 miles away. [LR89 LR77]

KAY STEVENS: And the same goes for Iowa. Certain parts of Iowa does not have a presence. What we are anticipating doing is once we are fully operational in all three Nebraska Goodwills, is we plan to work with Nebraska State Recycling Association and WasteCap to identify communities that want to do drop-off days. One thing Goodwill does is it parks trailers. And so we can negotiate an agreement whereby we provide the service for a weekend drop-off in a part of the state that does not have direct access to a Goodwill facility. And right now, the Grand Island store is serving Scottsbluff, North Platte, Hastings, Kearney, Lexington, I believe. But they have the resources and the interest to go out farther and bring in material and there's no limit on the material they would bring in because they could also be accepting household donations at the same time. So it's in our interest to have a presence outside those boundaries. So the purpose is to find collaborative relationships to bring material in from these outlying areas into the areas where we can make use of them. I think I heard Carrie say, maybe not in this presentation but at another time, or maybe it was Jeremy McNeal, but anyway, that they have had collection events in distant parts of the state and then had a

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second one a year later thinking, well, the big volume was already collected the first time, and had the volume double the second time. So when people say there aren't computers out in these rural districts, that's just plain wrong. They're everywhere and they are handicapped in that they don't have access to service providers. [LR89 LR77]

SENATOR LOUDEN: Well, I agree there's...that's very erroneous that they aren't out there. [LR89 LR77]

KAY STEVENS: Yeah, I know. [LR89 LR77]

SENATOR LOUDEN: They're just as deep out there as they are anyplace else. Other questions for Kay? Thank you for testifying, Kay. [LR89 LR77]

KAY STEVENS: Okay, thank you. [LR89 LR77]

KEN WINSTON: Good afternoon, Chairman Louden and members of the Natural Resources Committee. I will testify a little bit longer than I did this morning, but I'm going to start the same way. My name is Kenneth Winston, my last name is spelled W-i-n-s-t-o-n, and I'm appearing on behalf of the Nebraska Chapter of the Sierra Club. Nebraska Chapter of the Sierra Club consistently takes the position that those who create problems and specifically those who profit them should pay for the harm that they create. And to quote from the bible, as you sow so should you reap. What we'd like to see is a statewide effective electronics recycling program. And we've supported Senator Preister's legislation. He's been bringing bills for several years. And the bill that has had the most support is the producer responsibility approach. And I know there's been a little bit of discussion about the kinds of toxic substances that are involved in electronic products that are sold in the state. But I just wanted to again state that there are toxic substances in these items, including lead, mercury, cadmium, and other substances that are toxic to human beings and to other life forms. Secondly, the people that manufacture these devices profit from them and they profit from selling them to

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Nebraskans. And we believe therefore, because of the fact that they are profiting from it, they ought to pay for it when it comes time to dispose of it. Now there's been a little bit of discussion about different kinds of...what makes an effective recycling program. And as Senator Carlson asked or pointed out, and I think Senator Louden also pointed out, if people have to pay to recycle, oftentimes they won't do it. I mean, if it costs them money, then they'd rather either keep it in their basement or throw it away. And so the cost has to be minimal or no cost at all, or people aren't going to do it. Secondly, it needs to be available. If it's something that only happens once a year, as Ms. Hakenkamp testified, they get very small responses. I mean, I'm just thinking, okay, imagine if it was this Saturday. Well, a lot of people are going to be in Lincoln for the football game. They're not going to be available in their home town to recycle that item. And so it's going to be hard for somebody...there's always some reason why somebody can't do it if it's just one day a year. And so it becomes...also it can be one of these things where somebody thinks about it. It's like, oh, right, I was going to recycle that, only it's over and done with. And then I think it also needs to be something that covers the entire state. And I think Senator Louden indicated, well, there isn't a Goodwill for hundreds of miles in western Nebraska. So if we're depending upon one private enterprise entity to cover that, they're not going to be able to do the job because they're not going to have the resources available. So what we'd like to do, and I guess one of the other points that I wanted to mention is that we have an Advance Recycling Fee, that puts the burden on the retailer to charge it and it puts the burden on the consumer to pay it at the time. We'd rather have the fee paid by the manufacturer or, conversely as Ms. Stevens indicated, if the manufacturer steps up to the plate and says, hey, we want to have a program in the state, we're going to do recycling, then they would be exempt from that kind of fee. One of the things that I wanted to talk about is...and maybe I'm the only one confused about this, but under a producer responsibility approach, they either pay a fee based upon the amount that they sell in the state or the set up a program to handle waste and the program has to...it can't just be any program. They have to be able to show that they are going to handle electronic waste in the state. They also, it can't just be, okay, we're Dell, we're just going to take Dell computers, and

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so all those Sonys and Apples and Mitsubishis and IBMs, you know, we got to take them someplace else. They would have to take other kinds of waste as well, so it wouldn't just be, okay, you got to take the Dell stuff to the Dell guy and the Apple stuff to the Apple guy. They would have to take waste from other manufacturers if this program was going to work. So if you have the fee, if the fee is paid, then you create a program and then it can either be a local program that the city could do, like the city of Lincoln could set up their program, or it could be something where there's contracts with people like Goodwill to do it, or with private enterprise entities. And there's a lot of people out there who would be willing to get into it. It's just it's not really profitable or maybe they're kind of sliding by at the present time. I mean, I think there are some situations where this could be a great economic incentive if Nebraska businesses...if there was an infrastructure in place, you could really have some Nebraska businesses that could make some money recycling electronic components. So we support the producer responsibility approach. We think it's the most equitable way of doing it. You're not, as Mr. Hanlon indicated, you're not again charging the consumer twice for something that he's already paid for. I mean, he's already paid \$2,000 for a computer that now he can't give away. So now...so he's turning around and you're telling him, okay, now you got to pay another however much to recycle it. The person is going to say forget that, I'm going to put it back in my basement, like as you've indicated, Senator Loudon, that somebody is just going to hold on to it and wait for the day that somebody will take it off their hands. So we want to set up a program that will work statewide, that will be effective, provide a funding source for infrastructure, and provide some incentives for business to get involved in this process. And I guess I just wanted to make one comment about the reason that the bill proposes that there not be a landfill ban for a period of time. That's because of the idea that you want to get the program in place first so that you've got a system for recycling electronic waste and had that in place and then you ban it, so that you don't ban it first and then go, oh wait a second, we don't have a system to deal with this yet. Because then the problem is people decide, well, I can't put it in the landfill, I can't recycle it yet, so it's going to go in the ditch. And that's not where you want things like that to go. And I recognize we don't want to support any kind of

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illegal activity on anybody's part, but we don't want to inspire people to do things that are even worse for the environment. I would be glad to answer questions to the extent I'm able. Thank you. [LR89 LR77]

SENATOR LOUDEN: Questions for Ken? Senator Carlson. [LR89 LR77]

SENATOR CARLSON: Senator Louden. Ken, other than in producer responsibility, so I buy a computer and am done with it, there's still really, even with producer responsibility, there's still not really an incentive for me to get rid of it, is there? [LR89 LR77]

KEN WINSTON: Well... [LR89 LR77]

SENATOR CARLSON: As long as I don't care what my basement looks like. [LR89 LR77]

KEN WINSTON: Well, I don't know what your basement looks like, Senator. (Laughter) [LR89 LR77]

SENATOR CARLSON: It looks good, I'll tell you. [LR89 LR77]

KEN WINSTON: Oh, I'm sure it does, Senator. I'm sure it does. No, I was just thinking what my basement looks like and thinking about the computers that I have sitting in my basement and that I need to dispose of one of these days. [LR89 LR77]

SENATOR CARLSON: Why do you have one in your basement, because you of all people ought to want to do the right thing? [LR89 LR77]

KEN WINSTON: Well, I keep thinking I'm going to get another monitor and put it on there, let the kids play games with it. But so far that hasn't happened. So one of these

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days I'll recycle it. I mean...but in terms of you're asking about, and I appreciate what you're saying. I mean, we all ought to walk the walk if we're going to talk the talk. We want to set...I guess the main thing is we don't want to have disincentives. Right now it appears that there are disincentives. There's cost to the individuals. There's unavailability. I mean, where do you take them? I mean, there's some places in urban areas, there's some places you can take them. I don't know what you do in some of the...in some of the rural areas there are programs that are excellent. But it's really hit or miss. There isn't a statewide program. Some of the rural areas, they've gotten grants and they're doing an excellent job with it. But then there's some other places where it's not on their radar. They've got other issues they're trying to deal with. So we'd like to have a program so that regardless of whether you live in Lincoln or Omaha or whether you live in Chadron or Alliance or Scottsbluff or Holdrege or wherever, that there are programs available that you can access and so you can recycle these things, recycle computers and monitors, and so that it is available and that it doesn't cost you money to do it. [LR89 LR77]

SENATOR CARLSON: Thank you. [LR89 LR77]

KEN WINSTON: Thank you. [LR89 LR77]

SENATOR LOUDEN: Senator Wallman. [LR89 LR77]

SENATOR WALLMAN: Thank you, Senator Louden. Say, Ken, what do government entities do with all their computers now? I know where some of them ended up--south of me. But what do they do? [LR89 LR77]

KEN WINSTON: I don't work in government anymore so I don't know. One would hope that they are recycling them but I don't know. You'd have to ask somebody from... [LR89 LR77]

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SENATOR WALLMAN: Well, a whole slug of them ended up on a farm about two and a half miles from me. But so these are government entities, so that bothers me, too. We should be responsible, all of us. [LR89 LR77]

KEN WINSTON: Right. And I certainly think that that's one of the things that political entities can do, is they need to set an example for the citizenry that they govern. So I would certainly agree with that point. [LR89 LR77]

SENATOR LOUDEN: Other questions of Ken? I'll ask you this question, Ken. I asked it earlier, but I think you from the Sierra Club ought to be able to give me some idea. How soon are we going to be sitting here talking about disposing fluorescent lights? [LR89 LR77]

KEN WINSTON: Well, I think we need to talk about appropriate disposal of anything that has hazardous content in them. [LR89 LR77]

SENATOR LOUDEN: Now the next question is, Sierra Club is pushing for energy saving and generation, electric generation. How have they come down on fluorescent lights and energy saving? I mean, you can't have it both ways. You either got a light bulb with a batch of mercury and stuff in it or else you're going to save power. Where are they at on that? [LR89 LR77]

KEN WINSTON: Well, let me preface it by saying, by repeating what I just said. Anything that has a hazardous component should be appropriately disposed of. So having said that, we come down on the side of reducing energy usage. And there are lots of studies that show that there are a number of different ways where you can reduce electricity usage through the use of fluorescent light bulbs. And also there's different kinds of fluorescent light bulbs that are just as bright and use electricity and generate less heat, because another thing that you're doing when you have an incandescent... [LR89 LR77]

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SENATOR LOUDEN: Well, I agree that's part of it. But I'm talking about the mercury in them when you break one. [LR89 LR77]

KEN WINSTON: And I said it, and I'll repeat it if you want me to, that you need to dispose of hazardous substances appropriately in all situations. [LR89 LR77]

SENATOR LOUDEN: Okay. Thank you. Thanks for testifying, Ken. [LR89 LR77]

KEN WINSTON: Okay. Thank you. [LR89 LR77]

SENATOR LOUDEN: Let's see, next testifier? And are you the last testifier? Okay. Okay, thank you. [LR89 LR77]

DAVID HALDEMAN: (Exhibits 16-20) Well, good afternoon, Senator Louden and members of the Natural Resources Committee. My name is David Haldeman, that's spelled D-a-v-i-d H-a-l-d-e-m-a-n, and I'm the division administrator for the Waste Management Division of the Nebraska Department of Environmental Quality. What I'd like to do this afternoon is to provide you with an update on department activities related to electronics recycling and a little information on what some of the other states are doing across the nation. Now the information I'm providing today is essentially the same that was provided to you by the deputy director of programs for our department, Jay Ringenberg, at the committee hearing last month in Chadron, Nebraska. However, I do have some additional handouts that the committee might find useful. And in that packet that you've just been provided, on the right-hand side you'll find four handouts. And I'll just go through each of these as I go through this testimony. I'll begin with department activities. The department has two assistance programs that can provide financial support for electronic recycling projects. And these programs, the Waste Reduction and Recycling Incentives Grant Program and the Litter Reduction and Recycling Grant program, have provided funding for projects that range from the purchase of recycling

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equipment to subsidizing electronics collection events. Grants recipients have included businesses, not for profit organizations, and local government. That first handout in your packet summarizes the grant awards related to electronic recycling from 2003 to 2007. The total amount of money awarded annually from the two programs has ranged from about \$271,000 to \$452,000. As you review the charts, one thing I would like to point out is that some of the grant awards involve more than just electronics recycling. For example, if you look at the awards made in 2003, you'll see that we awarded \$102,000 to the Grand Island Area Clean Community System for a household hazardous waste collection event. For that project, electronics were accepted but they were only one of many types of materials that that project collected. We included all the projects that might involve electronics recycling on the chart just in an attempt to give you as complete a picture of the grant assistance that's provided as possible. This year we also amended our regulations to make it easier to recycle cathode ray tubes. As I'm sure you know, cathode ray tubes, or CRTs, are the glass video component of older computer monitors and television sets. CRTs are classified as a hazardous waste because of the high lead content in the glass. Under the previous regulations as a hazardous waste, the CRTs have been subjected to hazardous waste management requirements that have been an impediment to recycling. In January of this year, a federal law went into effect that provided a conditional exclusion from hazardous waste management standards for CRTs if the CRTs or CRT glass is destined for recycling. The department proposed to revise its hazardous waste regulations to adopt the federal exclusion at the March Environmental Quality Council hearing. The proposal was adopted by the council and the exclusion became effective last month, August 18. We view the regulatory change as positive because it will make the recycling of at least CRTs easier, yet still be protective of the environment. At this time, I would like to refer you to an updated handout that was given to you at the last hearing in Chadron last month. It's a handout that looks like this, only without the color to it. What it is, is it's a handout that is a comparison of state laws on electronics recycling that was prepared by the Computer TakeBack Campaign which I just simply downloaded from the Product Stewardship Institute web site. As you look at this handout, you'll note that the state of North Carolina

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has been added to the list for a total of the nine states with the comprehensive programs in the nation that have electronic recycling statutes. In addition to North Carolina, the other eight states are Maine, California, Maryland, Washington state, Minnesota, Texas, Oregon, and Connecticut. And I'm sure you all recall that this past January, an electronics recycling bill was introduced in Nebraska by Senator Preister, and that's LB583 which I think has been mentioned by some of the others who have testified. And I believe this will be a carryover bill this next year. A third handout in your packet that you might find helpful in evaluating what is going on nationally in state electronics recycling is a recently updated report for Congress that was prepared by the Congressional Research Service. This document explains some of the common national issues and discussion on some of the laws that are presently in place. And I've looked at the document and I think it frames the issues very well and provides information on, like I said, some of those laws that are out there. And then for the final handout, I know there were questions at the last hearing about who...we know a little bit about entities that can collect and we've heard some of that today, but who actually recycles or refurbishes electronics. And you know, this being relative also to LR89, I did ask staff to put together this handout that lists electronic recyclers and refurbishers in the state. This handout should not be considered all-inclusive, that is to say we may not have identified all businesses in the state that are involved in recycling or refurbishing. These are just entities that we are aware of. And you might also note that some of these are very small businesses or organizations. In closing, I would just like to indicate that the department is willing to provide assistance to the committee should it contemplate electronic recycling legislation this upcoming year. And if you have any questions, I'd be glad to try to answer them or get the help from Jay Ringenberg to do the same. [LR89 LR77]

SENATOR LOUDEN: Questions for David? Senator Wallman. [LR89 LR77]

SENATOR WALLMAN: Thank you, Senator Louden. David, do these people that recycle these computers all charge the same amount per pound do you know? [LR89

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LR77]

DAVID HALDEMAN: You know, the list was put together, we basically touch these businesses in two ways. We either provide grant funding or they may come to us for compliance assistance or help in understanding regulations that might apply to them. And we really...I really don't have that kind of information. That's not typically what we get into. [LR89 LR77]

SENATOR WALLMAN: That's fine. [LR89 LR77]

SENATOR LOUDEN: Other questions for David? David, you know, as we've seen some of this before, and of course...I mean, I like the looks of it and everything like that. But it's still...I don't know if it's anything I can make any decisions on yet because Maine is the only one, they passed the law in 2004 and their program didn't start until 2006. In other words, it's been going about a year now. And the households are the only ones that products are recycled. So that's kind of a narrow margin or narrow recycling bill, I would think. And California has been in since 2004 and consumers pay a fee. The rest of them didn't start...Maryland started, I guess, they started in 2006, but a lot of these haven't started until 2009. I mean, they're just barely getting started and some of them were just signed into law. Is there any kind of feedback that tells us what's happening in these states? Is it working in Maine? Is it working in California? You know, and California is a hard place to find out because there's so many people out there that there's bound to be a load of junk coming. Have you got any feedback on any of these states, how well this is going on or working? [LR89 LR77]

DAVID HALDEMAN: Not from any of the individual state program reps in other states. And I probably do, like a lot of people in this room, I go to the Internet and I look for news articles or industry documents that might be out there that describe how they're functioning. But you're correct. I think there were four states that just had legislation that was enacted this year--well, now five with North Carolina. But it is...you know, I just

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really haven't received feedback. [LR89 LR77]

SENATOR LOUDEN: And they've...the lady testified, you know, that Goodwill is doing a pretty good job of getting it. So actually right now, any recycling we're doing is more or less on a private basis. Would that be correct to say? There's not that many government agencies or state agencies that are getting involved in this. It's mostly a private affair that they're recycling these televisions and these computers. [LR89 LR77]

DAVID HALDEMAN: Well, take the state of Nebraska. You know, there's some discussion about hazardous waste generation. And I think a question that may have been about local government or maybe state government about whether or not...you know, what do they do with their electronics. Our Department of Administrative Services, they contract with a company in Omaha to recycle the electronics that the state generates. And we are like a business, although we're state government, we are like a business because we're also subject to the same hazardous waste laws, rules, and regulations that a business is. So if my agency, for example, generates more than 220 pounds of a hazardous waste--including all of the wastes that we might generate, more hazardous waste than just electronics equipment--if we generate more than 220 pounds a month, we become a small quantity hazardous waste generator, as pointed out before. We have to recycle those materials and find a way to properly manage them. In terms of us actually setting up an infrastructure to collect and then actually do the activities that have been described previously like refurbishing or recycling, we are actually demanufacturing electronics. No, I'm not aware in Nebraska at the state government level, you know, state government doing that. [LR89 LR77]

SENATOR LOUDEN: Has there been any new developments in recycling television sets, these old TV sets, or is there any value at all in recycling old TV sets? [LR89 LR77]

DAVID HALDEMAN: Well, much of what I heard from some of the other testifiers is

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pretty much what, you know, it's the same. For example, the wood can't be recycled, so that does get disposed of. The CRTs, I think the company in Omaha, CP Recovery, I believe they recycle the CRTs. They cut out the front of them and break them down and they get shipped off. And then of course the electronics are probably recyclable in a similar fashion as what you'd find in computers. [LR89 LR77]

SENATOR LOUDEN: Okay. One last question on some testimony out there in Chadron. We were having people mention that they had to use in-state recyclers, you know, if they've got any grant funds. And I see you sent the letter out. Now did you send that letter...did you get that to most of those people that apply for grants or does that go out with the grant funding, that if they can find transportation closer and cheaper they can go ahead and use it? [LR89 LR77]

DAVID HALDEMAN: Well, to answer, I sent you a letter indicating that we were going to send a letter out and address that and sort of explain that position. And then there was a follow-up letter that went out. I think it was primarily to the organizations that represent the majority of the grantees, which are entities like the Keep Nebraska Beautiful affiliates. So we did send it out to all of them. And I think that comment you heard at the hearing actually came from one of the local affiliates, possibly from Alliance. But we did send that letter out to clarify that we understand that we require a three-bid process because we want to ensure that, you know, we're using the grant funds well. But lots of times you can't find three in-state bidders or sometimes it may be cheaper to go out of state. And so we are not prohibiting in our grant process anyone from using an out-of-state vendor. [LR89 LR77]

SENATOR LOUDEN: Okay. Now as your agency, you mentioned, you keep saying there's a place in Omaha or someplace to recycle some of this stuff. Have you looked at other places? I mean, have you contacted like South Dakota to see if there's one in Rapid City or the Front Range area to see if there's somewhere in Colorado that do that so that you can give this information to some of these people that are applying for

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grants? [LR89 LR77]

DAVID HALDEMAN: I have not done that. But again, in reading articles and researching it, I know there are other places, certainly if you're out in the Panhandle there might be opportunities in Colorado or perhaps South Dakota. [LR89 LR77]

SENATOR LOUDEN: How hard would it be for your agency to compile a list of people that recycle these things to hand out to these people when they're applying for grants? [LR89 LR77]

DAVID HALDEMAN: I think the way I'd approach it is I'd probably ask my counterparts in the other states to see what they're aware of and see if they have lists available. And if there are, we can make them available. [LR89 LR77]

SENATOR LOUDEN: Okay. Thank you. Other questions for David? Seeing none, I guess thank you, David, for testifying. [LR89 LR77]

DAVID HALDEMAN: Thank you. [LR89 LR77]

SENATOR LOUDEN: And is that the last testifier? I guess it was. Would you care to close, Kate, for Senator Preister? [LR89 LR77]

KATE ALLEN: Kate Allen, on behalf of Senator Preister. I wanted to follow up on just a couple of things that were raised. And someone raised the question or the issue about a state program having to be set up under a producer responsibility program and the costs and the bureaucracy and so forth involved in that. The same thing would have to be established under an ARF because the fee that's collected then goes to the state, and then the state has to set up a program. So either way you're going to have state involvement, whichever way you go. And the other question, I believe it was Senator Carlson's, about the responsibility being placed on the citizen. If you've got a recycling

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event, even if it's free, you have to go through the labor and you have to have the commitment. And I think that's the same with any kind of recycling, whether it's recycling your paper, your plastic, or whatever, you have to have that commitment by the citizen, that they care about it and they're going to have to be involved in that. And even though we have people that pick it up, you still have to have that commitment. Recycling involves another layer of labor, separation, that sort of thing. Any other questions?
[LR89 LR77]

SENATOR LOUDEN: You don't have to answer questions when you close, Kate.
(Laughter) [LR89 LR77]

KATE ALLEN: Thank you. [LR89 LR77]

SENATOR LOUDEN: Thank you for testifying and bringing this forward. With that, that will close our hearings on LR89 and LR77. And thank you all for being here and thank the senators for their indulgence again today. Appreciate your being here. [LR89 LR77]